

**Housing Privatization in the Central Asian
Republics of the Former Soviet Union**

**Uzbekistan
Kyrgyzstan
Turkmenistan
Kazakhstan**

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ABSTRACT

This report describes the status of privatization of the housing sector in four Central Asian Republics of the former Soviet Union—Uzbekistan, Kyrgyzstan, Turkmenistan, and Kazakhstan. The report addresses privatization of the existing state-built housing stock, and steps taken to enable the private sector to play a larger role in housing production and maintenance. Recommendations for technical assistance are provided.

EXECUTIVE SUMMARY

A team from the International City/County Management Association (ICMA) visited the Republics of Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan during the period November 1-18, 1993 to conduct fieldwork to assess the progress in privatization of the housing sector. The first concern in this analysis was to determine the progress made in transferring ownership of the state housing stock to current tenants. There are active programs that permit privatization by virtually all tenants in Kazakhstan, Kyrgyzstan, and Uzbekistan. Two immediate reasons to focus on privatization of the existing stock are 1) to encourage better maintenance by devolving maintenance responsibilities to the residents themselves, and 2) to allow for more efficient use of the stock through an effective real estate market. In examining privatization of the state housing stock in these countries, particular attention was, therefore, paid to progress in meeting these objectives.

Beyond the transfer of ownership and creation of a market in former state housing stock, the scope of work required ICMA to examine briefly the progress in a variety of areas where reform is needed to enable the housing sector of the economy to function with a primary reliance on private capital for maintenance of the existing housing stock and production of new housing units. Privatization of the existing stock of housing is a critical, initial step in creating a market environment conducive to entrepreneurial construction of single and multifamily dwellings that will meet current pent up demand, accommodate future population growth, and meet the needs of a more mobile population. Characteristics of such a market environment include private ownership of land and other forms of land tenure that are secure, lengthy, and alienable; the right to use real property for entrepreneurial purposes; private enterprises that are permitted to construct single and multifamily dwellings nonspeculatively and speculatively; financing arrangements that encourage investments in real estate development; transparent, predictable, and fair governmental procedures to regulate development; nonmonopolistic practices in the construction industry; and basic guarantees of property rights and due process.

GENERAL FINDINGS

The key findings to emerge from the fieldwork in the four republics can be summarized as follows:

- 1) Uzbekistan, with 45 percent of the state stock privatized, appears to be furthest along with its housing privatization program. Along with Uzbekistan, Kazakhstan (35 percent privatized) and Kyrgyzstan (25 percent privatized) have active and continuing programs that should result in privatization of most of the municipal stock over the next 1 to 2 years. Turkmenistan, where less than 5 percent of the municipal housing stock has been privatized, is the only republic to limit tenants' opportunities to purchase their units.

- 2) None of the republics has put in place a detailed legal structure for condominiums or some other appropriate form of common interest association for addressing the shared interests of apartment owners. The governments are only now beginning to give consideration to creating a process for shifting responsibility for property management from the government to the owners of the privatized units. The land rights associated with apartment buildings containing privatized units remain ambiguous.
- 3) Although ownership of the stock has shifted or is shifting rapidly, all republics have reacted with some alarm to the sudden appearance of a housing market that offers a quick cash-out for those who can move, notably emigrants. Turkmenistan forbids resales, Uzbekistan has suspended resales, and a strong parliamentary element is pushing for the same in Kyrgyzstan.
- 4) Little or no effort has been made to relieve the municipalities of the financial and management burden of maintaining the enormous housing stock as it shifts to private hands. It will be difficult politically to continue with stated objectives of reducing maintenance subsidies, which now consume 25 percent or more of city budgets, unless parallel efforts are made to improve the efficiency of maintenance services through the increased accountability and market discipline services that comes with privatization of these services.
- 5) The basic legal structure for collateralized lending of real property is missing in all republics, although Kazakhstan is addressing this need with AID technical assistance.
- 6) Housing finance, insofar as it exists at all, still consists of heavily subsidized state credits; there appear to be no public or private banking institutions prepared to extend secured construction or mortgage financing on a basis that reflects the cost of funds.
- 7) Land laws do not currently provide a clear path to allocate land to build housing except for the direct benefit of the person or corporate body to house itself or its employees. The concept of speculative development would appear to be completely alien to the inherited Soviet system and possibly the underlying land ethic of the cultures. Kyrgyzstan appears to be furthest along in addressing this fundamental issue.
- 8) The cities continue to exercise complete and often arbitrary authority over the allocation of land for development. Establishing consistent standards and transparent processes for land allocation will be an important step in attracting investors to the housing sector. Initial efforts are being made, notably in Kazakhstan, to increase land lease fees to recapture imputed land values, an important first step in introducing market discipline in the allocation process.

- 9) Property registration systems for flats are rudimentary but adequate to support market transactions. The system of registration of use rights in land or land leases is not conducive to open transactions and would need substantial redesign in conjunction with reforms of the land laws themselves.
- 10) Fragmented responsibility, as well as inconsistent systems, exist for the registration of property interests in land, residences, and other types of real property between urban and rural areas.
- 11) New construction has slowed substantially in all republics, with the apparent exception of Turkmenistan. The dramatic fall in construction of state housing is only being partially compensated for by increases of other sources, notably cooperatives.
- 12) Except for Kyrgyzstan, there appears to have been little or no work on development of a safety net for lower income families as rent, maintenance, and utility fees rise. However, Kazakhstan's recent presidential decree does condition future rent increases on establishment of a national housing allowances program.
- 13) Of the four republics studied, Kazakhstan has gone the furthest in developing a unified public policy for the housing sector. Its broad-ranging housing decree, issued in September, is a base upon which more specific policies and programs can be built.

SUMMARY RECOMMENDATIONS

Near-term technical assistance should give first priority to reforms directed at bringing market forces into play in its allocation and maintenance of the existing housing stock. Here assistance would be timely in respect not only to overall policy and law, but also in respect to implementing operable programs and demonstrations at the local level, in particular:

- privatization of housing maintenance and formation of common interest associations
- related assistance in re-targeting housing subsidies in the form of consumer-oriented housing allowances to facilitate the transition to market pricing for housing

It is worth noting that officials in all four countries are eager for assistance in helping to put in place the overall legal framework for private real estate development and financing markets. They recognize that this is an area where important progress can be made in anticipation of improved economic conditions. Moreover, despite the common cultural resistance to fee simple ownership of land in the Western sense, there is increasing recognition among government officials of the need to clarify land tenure rights for the purposes of investment and financing of housing and other real property development.

Consideration should be given to a regional technical assistance strategy to help develop model legal approaches with respect to 1) clarification of land interests, 2) the governance of real property transactions, 3) the legal basis for entrepreneurial real estate development, 4) government regulation of land allocation and land use, and 5) completing privatization of state-owned housing (e.g., common interest law).

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I. CHARACTERISTICS OF THE HOUSING STOCK

Housing in Central Asia has suffered from underinvestment in comparison with the other former republics of the Soviet Union. Square meters of living space per capita are about 20 percent less than the average for the former Soviet Union, 25 percent lower than for Russia, and 50 percent lower than for the Baltic Republics. Per capita housing investment has been similarly low, exceeding in recent years only that for the Caucasus.

These figures are clouded somewhat by the high population growth rates, which result in unusually large family units. Nonetheless, it is clear that the preexisting system, which relied largely on state provision of subsidized housing, has been least successful in Central Asia.

Another distinguishing characteristic in Central Asia is the historically high rate of private ownership of housing. Individual (single family) housing, even in urban areas, is highly favored, and despite the lack of land ownership it is considered a secure tenure arrangement. Privately owned housing continues to thrive and attract personal investment in parallel to industrial production systems supported by the state.

With this legacy, the privatization of the state housing stock should be a popular proposition. It offers the tenant a better prospect for controlling his or her home (likely the major asset), enhancing its value, and liquidating it at will. It is no doubt attractive to cities, for it presents the prospect of disentangling a city from the nearly hopeless task of maintaining a decrepit housing stock from which it cannot recover adequate revenue under current arrangements.

With the exception of Turkmenistan, all republics in this study are proceeding aggressively to turn state housing over to the tenants. The potential meaning of this achievement, as well as its limitations when divorced from other steps to enable new construction with private capital, are only now becoming understood. The countries in the region now face a second stage of reform: to consolidate private ownership by eliminating remaining barriers to alienation of privatized housing, and to firmly establishing management and maintenance as a component of home ownership responsibility. With further action on this reform agenda, the steps taken to privatize existing housing can result in more efficient use of the housing stock, improved maintenance of structures, and the evolution of effective demand to properly guide potential investors in new housing. To go beyond these achievements to infuse a new form of housing delivery to meet the needs of the underhoused, the countries will need to address the many basic and systemic characteristics of the inherited Soviet system that discourage and even deny the prospect for private investment in housing.

CURRENT HOUSING STOCK

The data below show current housing stock figures for the republics:

TABLE 1.—Current housing stock (No. of units)

| | Kazakhstan | Kyrgyzstan | Turkmenistan | Uzbekistan* |
|--|-------------------|-------------------|---------------------|--------------------|
| Capital city | 312,000 | 148,000 | 119,000 | 761,000 |
| Other urban | 2,159,000 | 167,000 | 371,000 | 853,000 |
| Rural | 1,823,000 | 536,000 | 472,000 | 3,461,000 |
| Total | 3,670,000 | 851,000 | 962,000 | 5,075,000 |
| * For Uzbekistan, "other urban" refers to the 12 regional capitals besides Tashkent, and "rural" is the balance. | | | | |

The following data show the source of the housing stock. Housing is grouped together by the initial sponsor/owner of the stock, irrespective of its current ownership.

TABLE 2.—Developer (No. of units)

| | Kazakhstan | Kyrgyzstan | Turkmenistan | Uzbekistan |
|-------------|-------------------|-------------------|---------------------|-------------------|
| State/mun. | 2,233,000 | 76,000 | 202,000 | 2,214,000 |
| Cooperative | 215,000 | 26,000 | 19,000 | 97,000 |
| Enterprise | 515,000 | 90,000 | 105,000 | 53,000 |
| Private | 1,245,000 | 647,000 | 635,000 | 3,196,000 |
| Other | 86,000 | 18,000 | 10,000 | 28,000 |

It is only in Kazakhstan that a majority of the housing was built through public investment. This perhaps reflects the former Soviet Union's intent to provide housing for migrants to an area, since

Kazakhstan experienced more in-migration during the Soviet era, in line with Soviet investment patterns.

II. PRIVATIZATION OF THE CURRENT HOUSING STOCK

A. TENURE CHARACTERISTICS OF THE EXISTING HOUSING STOCK

Tenure characteristics, until recently, closely tracked the source of the housing: state/municipal (hereinafter referred to as municipal housing) and enterprise housing was nearly all owned by the government or, by extension, state-owned industries. Private housing was predominantly single family owner-built housing, often inherited across generations. Cooperative housing became privately owned at the completion of mortgage payments, often after 15 years or more.

Kazakhstan, Kyrgyzstan, and Uzbekistan have active privatization programs whose goals are to devolve ownership of municipal housing stock to sitting tenants. Turkmenistan, after an initial start with a broad privatization program in Ashgabat, now limits privatization to long-term tenants. The data below show privatization progress to date for the four countries:

TABLE 3.—*Privatization of the municipal housing stock*

| | Kazakhstan | Kyrgyzstan | Turkmenistan | Uzbekistan |
|--|-------------------|-------------------|---------------------|-------------------|
| Percent privatized through 1991 | | | | |
| Capital city | Under 5% | 5% | 0% | Under 5% |
| Non-cap. city | Under 5% | 7% | 0% | Under 5% |
| Current percentage privatized | | | | |
| Capital city | 60% | 23% | 1% | 98% |
| Non-cap. city | 35% | 25% | 1% | 45% |

As a result of these programs, overall ownership rates for the entire stock are extraordinarily high, as seen in the estimates below:

TABLE 4.—*Current percentage of total housing stock in private ownership*

| | Kazakhstan | Kyrgyzstan | Turkmenistan | Uzbekistan |
|--------------|-------------------|-------------------|---------------------|-------------------|
| Capital city | 71% | 54% | 10% | 90% |
| National | 60% | 78% | 67% | 75% |

Privatization programs in each of the three republics with active programs have followed roughly the same course. Initially, sales prices were set to recapture some of the historic costs of the units (however, the formulas used reduced real costs far below replacement and market values). Free privatization was offered for certain groups traditionally favored under the Soviet system (e.g., veterans). The rationale for selling the units was to both generate revenue for further development and to reduce the windfall benefit conferred on those who received preferential treatment under the old system in the form of large and higher quality flats.

Since the initiation of these privatization programs, the number of tenants receiving the housing for free has grown by including additional groups, such as certain professions (Uzbekistan) or tenants of a certain minimum tenure in the city (Kazakhstan). Little or no inflation adjustment has been made in the price paid by those who do not qualify for free privatization. The result of these trends is a growing group of those getting their units for free, with the balance paying nearly nominal amounts.

Under these circumstances, there would appear to be little reason not to privatize one's flat. However, there are forces that could act to modestly temper the rush to privatization: 1) the strong tenure rights that already exist for renters, 2) incompleteness of the legal structure in areas such as common ownership, 3) concern about forthcoming property taxes, or 4) uncertainties about maintenance costs, especially in severely deteriorated structures.

B. PRIVATIZATION OF HOUSING MAINTENANCE

Management and maintenance of municipal housing has traditionally been the sole function of the cities. This function, which included maintenance of individual units and common areas, was carried out through a decentralized system of field offices. The poor quality of maintenance has been a long-standing concern. With the economic hardships of the past couple of years, in practice maintenance is often limited to critical building systems (e.g., keeping the elevators running or the roof from leaking), with minimal preventive maintenance or repairs inside individual units.

Privatization of the stock left basic responsibility for maintenance of common areas in the hands of the preexisting city maintenance services. For instance, in Uzbekistan, new owners of their units were required to sign maintenance contracts with their respective preexisting maintenance unit for maintenance of the structure and common areas, formalizing a direct relationship between the owner and what is in effect a city agency with a state-enforced monopoly on maintenance business for a particular area. Maintenance inside the unit is no longer officially provided. The payment to the maintenance unit remains the same as for those continuing in rental status.

Kazakhstan has perhaps moved furthest to shift maintenance responsibilities to owners. Owners of units in completely privatized buildings can in theory choose a state company, cooperative, private firm, or other business entity to maintain the building. Uzbekistan's privatization law provides for "partnership organizations" to assume maintenance responsibilities by procuring services from whatever source.

Despite the authorization for privatizing these services, little or nothing is yet under private management arrangements. The heavy current subsidy for communal services presents a fundamental hurdle to the city in privatizing this function. In Tashkent, for example, communal fees are said to cover only 30 percent of maintenance costs, with the balance subsidized from the city budget. The fact that these are subsidized services need not impede privatization, but in the absence of models that shift the flow of the subsidy from the provider of the service to its consumer (the apartment owner) for his expenditure on the service, cities are unclear as to how to proceed.

In Kyrgyzstan, the city of Bishkek is also tackling the maintenance privatization issue by "privatizing" maintenance units, starting with those units that have commercial rental income to cross subsidize residential services. This, however, is not a complete model, for it does not introduce competition into the provision of maintenance services. Further, commercial revenue is not necessarily a sound financial base on which to support residential maintenance on a continuing basis.

C. THE ROLE AND PROSPECT OF HOME OWNERSHIP ASSOCIATIONS

The privatization laws throughout the region are creating de facto condominium units. Owners are given clear title to the unit (although this is not defined to a Western standard of specificity, e.g., precisely where the "unit" begins). Ownership of common areas or surrounding land is not conveyed. Nonetheless, as illustrated by the apparent interest and intent of the countries in shifting maintenance responsibilities for these areas to the owners, control of common areas by the residents is contemplated.

The privatization laws in Kazakhstan, Kyrgyzstan, and Uzbekistan all envisioned the need for homeowner associations. In Kyrgyzstan, "economic associations or partnerships" are authorized but only when all units in a building are privatized. Kazakhstan is at work on a condominium law that might in effect be a model for the region.

Clearly, homeowner associations will be a critical ingredient in the effective privatization of management and maintenance services, and in shifting real responsibility to the owner of the asset. This is well recognized in each country. Crafting the legislation is a critical first step. Beyond this there are a number of peculiar challenges that grow out of the Soviet housing legacy. Among these are:

- The lack of a tradition of active tenant organizations on which to build ownership associations.
- A structure to compel payment to an autonomous organization may not be readily embraced. Seizure of a unit for nonpayment may not be politically feasible.
- Ownership associations would in many cases be assuming responsibility for extremely deteriorated structures.
- The associations may need to rely directly or indirectly on public subsidy for at least several years.
- Standards for "arms-length transactions" in the procurement of services do not now exist.
- The role of the organizations vis-a-vis commercial space in the buildings will need to be resolved.
- There is no private building inspection profession to advise ownership associations on technical issues.
- Homeowner association information should be open to facilitate informed marketing of apartments.
- The "hybrid building" problem, i.e., the presence of both privatized units and government rental units in the same building, especially during this transition period.

D. CHARACTERISTICS OF THE REAL ESTATE MARKET

A fundamental economic reason to privatize the housing stock is to effect its more rational use. The prior production-oriented system of the Soviet Union focused on, but abysmally failed to meet, minimal per capita space standards. This left a legacy of widespread underhousing of families and parallel, but not well documented, overhousing of some families. A major "sorting

out" of the stock is perhaps the most immediate need. Privatization holds out this prospect by allowing personal preferences on expenditure of disposable income to hold sway. It also allows for a freer flow of resources between consumption and investment. For instance, a family might choose to remain relatively crowded or doubled up across generations in order to minimize consumption of housing, but to maximize disposable income available for investment in a small business.

In Kazakhstan and Kyrgyzstan, active markets in sales of previously privatized apartments have quickly evolved. In both countries a private real estate industry is developing to facilitate sales and open up market information to prospective buyers and sellers.

The apparent success of privatization in creating a market for units is viewed with concern by some and outright disdain by others. One obvious result is that resale of a unit can result in a perceived windfall to the emigrating family since privatization was at little or no cost. (Privatization can be regarded as the state paying out a dividend rather than conferring a benefit; still, the picture of a Russian leaving with his housing converted to cash is disquieting.) The true inequities come more to the surface when prime units are rented out to foreigners for residential or commercial use. Yet this apparently has been less of a concern in the region, if only because the foreign demand, except perhaps in Almaty, is modest.

In reaction to the "cashing out" phenomenon and perhaps also to protect uninformed sellers, Uzbekistan declared a moratorium on resales of privatized units (the market in cooperative units, which can still be resold, continues to be active). The Kyrgyzstan parliament passed a similar restriction on resales, which, although vetoed by the President, is likely to rise again as a hot political issue. Kazakhstan imposed a stiff tax on resales, but it is not clear if the motive was primarily to discourage sales or generate revenue.

Without the clear right to alienate a property, the movement to devolve maintenance responsibilities to owners is compromised. A housing market serves to inform sellers and buyers of the relative value of units in better and worse maintained buildings. This information in turn could help owners and ownership associations in determining the level of maintenance that they wish to pay for. This type of market information is ultimately useful to developers of additional housing stock as well. While some near-term restrictions on resales might be necessary politically, any long-term commitment to this type of restriction brings into question the usefulness of pursuing other reforms in the housing sector.

The following table compares the privatization provisions for each of the four republics studied.

TABLE 5.—Comparison of privatization programs and provisions

| | Kazak hstan | Kyrgy zstan | Turkmen istan | Uzbek istan |
|--|------------------------|------------------------|--------------------------|------------------------|
| 1. Breadth of the privatization program for state stock | | | | |
| A. Is privatization of state/municipal stock provided for? | Yes | Yes | Yes | Yes |
| B. Is enterprise housing included? | Yes | Yes | Yes | Yes |
| C. What limitations apply to privatization? | | | | |
| Length of tenure | Not clear | No | Yes (15 years) | No |
| Family characteristics | No | No | No | No |
| Other | No | No | No | No |
| D. Are there excessive administrative delays or barriers? | No | No | Legal delays | No |
| 2. Rights conferred in privatization | | | | |
| A. Are common areas included in privatization? | No | No | No | No |
| B. Is the land included in privatization? | No | No | No | No |
| C. Is resale of housing restricted? | No | No | Yes | Yes |
| D. Are resale prices administratively set? | No | No | N/A | N/A |

| | | | | | |
|---|--|------------------|------------------|-----|-----------|
| E. | Is private rental of privatized housing restricted? | No | No | No | No |
| 3. Devolution of ownership responsibilities to citizens | | | | | |
| A. | Does the law provide for private management and maintenance services? | Yes | Yes | No | Yes |
| B. | Are options for private management and maintenance restricted? | Yes | No | Yes | Yes |
| C. | Are there financial disincentives to private management of housing? | Yes | No | Yes | No |
| D. | Are there undue administrative barriers to private management of housing? | Yes | Yes | Yes | Yes |
| 4. Targeting subsidies to enable movement toward market pricing | | | | | |
| A. | Is there a housing allowance program in effect or planned? | Under discussion | Under discussion | No | No |
| B. | Is a percentage of the state housing stock to be reserved for subsidized rental? | Not clear | Yes | No | Not clear |

| | | | | | |
|----|---|-----------|----------|-----------|----------|
| C. | Are there other provisions that result in a housing safety net? | Not clear | None yet | Not clear | None yet |
|----|---|-----------|----------|-----------|----------|

III. PROSPECTS FOR PRIVATE INVESTMENT IN HOUSING

To meet the housing needs of their populace, each of the former Soviet Republics in Central Asia had relied to a large extent on private investment. This investment has been substantial, even in urban areas where multifamily housing predominates. The past system in fact promoted private investment in several regards. For example, loans at concessional rates were often available to build one's home, and the land tenure provided was in most cases quite secure. The development requirements that were a condition of the land allocation were typically easy to meet, and it was often possible to use the property for some modest commercial activity.

At the same time, the system was not designed to promote any investment that went beyond housing oneself and one's family. It was not attractive to build excess space for rent on the premises because rents generally were depressed due to the low rent regime fundamental to the state housing system. The property could not be freely alienated for an investment purpose. There was no mortgage financing to support an active real estate market.

Despite a strong heritage of private ownership of housing supported by a cultural preference for single family housing, no base exists upon which private profit-oriented investment in housing can occur. In large measure a new policy environment supported by appropriate legal and financing systems, freer and more transparent procedures for accessing land, and a competitive and more flexible construction industry are necessary. (A summary of current characteristics regarding private investment in housing are shown in Table 6 at the end of this section.)

A. REFORM OF THE LEGAL SYSTEM

One of the purposes of housing privatization is to facilitate the creation of a housing market. However, it is only one step toward the goal. An environment conducive to individual home construction and competitive, entrepreneurial construction of single and multiple family dwellings is another necessary condition. Characteristics of such a market environment include private ownership of land and other forms of land tenure that are secure, lengthy, and alienable; the right to use real property for entrepreneurial purposes; private enterprises that are permitted to construct single and multifamily dwellings nonspeculatively and speculatively; financing arrangements that encourage investments in real estate development; and transparent, fair governmental procedures that regulate

development. There has been only modest activity in developing the legal underpinnings necessary for such a system.

1. Clarification of Land Interests and Security of Tenure

The basic status of land, particularly urban land, does not appear to be changing substantially with independence of the republics. The new constitutions continue a fundamental principle of common rather than private ownership of land. Although this principle is now grounded in a traditional land ethic rather than a political/economic philosophy as in the past, it results in no effective departure from the past. The new land laws define a variety of leasehold-type tenures fundamentally tied to specific uses of the land. These evolving systems would appear to continue strong tenure rights for single family housing.

A central problem continues to be the linkage between allocation of land and proposed use. This will continue to constrain market transactions. Efficient private development of housing requires a variety of techniques as a hedge in case a project does not work out. For example, if most options for a developer to recapture investment in land are precluded, this added risk will need to be reflected in the price. Even without fee simple ownership permitted, the basic securities in tenure can be created.

2. Legal Basis for Entrepreneurial Development

A fundamental barrier to private investment in housing is the lack of legal recognition of the role of an entrepreneur. The new land laws do acknowledge joint ventures and mixed ownership arrangements, but land allocation systems do not acknowledge speculative investment as a use right. Specifically, what becomes of an interest in land if a project is delayed or becomes financially nonfeasible?

3. Regulation of Land Allocation and Use

No land use regime has been created in any of the countries that would fundamentally alter the system by which a city exercises strict authority on land development. Most vacant land is held by the cities or enterprises. There is no legal concept that would enable open and transparent competition to purchase rights in this land. In this context, the master plan, instead of being an enabling document as in the West, is just one of many sources of the power that a city can wield in allocating land.

Essentially, every project needs to be negotiated with the city prior to allocation of land. The delays and uncertainties involved would further deter private investment.

4. Basis for Collateralized Lending

Kyrgyzstan has gone the furthest in enabling the use of land and property for collateral. Its Law on Pledge, adopted in March 1992, authorizes the use of existing buildings and land for loan collateral. Lease terms on the land can be mortgaged only in conjunction with the buildings on it. The law mandates court-supervised foreclosure procedures, and establishes minimal formal registration requirements for mortgages.

Kazakhstan's pledge law is designed for movable property but could be applied to construction lending and real estate. An ICMA advisor is now working with the government on a new mortgage law. Uzbekistan has adopted a Law on Pledge and Collateral. Interests in land can be collateralized under it but, as a practical matter, it is not clear that a citizen's pledge of an interest in land or improvements would not be undermined by government action terminating the interest in the land.

B. PRIVATIZATION AND COMPETITION IN THE CONSTRUCTION SECTOR

The Central Asian Republics inherited a construction industry that is integrated vertically and horizontally. The sector is characterized by large specialized firms closely integrated with suppliers. In Tashkent, a city of over 2 million, for example, there is only one construction company for high-rise buildings and only one for mid-rise buildings. These firms have carried out only state- or enterprise-funded housing projects in the past, and have rarely, if ever, had to compete in any respect for their work. The challenge ahead is equally one of privatization and competition.

These companies are also burdened with outmoded and inefficient technologies. The industry is captive to prefabrication and other mass building technologies that constrain design and are often not readily adapted to smaller in-fill type projects to which private investment might be more readily drawn. A further and increasingly important shortcoming is the energy-inefficiency of these technologies.

There has been some restructuring in the sector. Most of the large firms have or are in the process of becoming joint stock companies, often with majority government ownership but with

substantial employer equity as well. Yet it is unclear that this has unleashed any efficiencies or other improvements. State, enterprise, and cooperative residential investments are often continuing to provide a base of work in an environment unexposed to competition. A promising avenue for reform is to create competition for government and enterprise contracts. This will require the development of competitive procurement procedures and training for staff in competitive processes.

The status of the construction industry does not in and of itself deny opportunities for private investment; indeed construction companies are anxious for private clients. However, the current inefficiencies in the system, often caused by inconsistent factor markets, would have to be passed on as added costs of housing. Another problem is the lack of a construction bonding system to protect a developer when a builder cannot complete a project as planned. This risk premium to build in a Soviet Republic would also be passed on as the price of housing in an open market context.

At the other extreme are small private companies that are active in a steadier market for single family construction, repair, and renovation. Rather than encourage these firms to scale up for larger state investments, they are more often excluded from participation as governments at all levels appear to favor the large firms with excess capacity. While the social reasons for pursuing this policy may be compelling, it does perpetuate the past command system with its endemic inefficiencies.

C. HOUSING FINANCE

While some steps have been taken to lay the groundwork for housing finance—progress in collateralized lending laws, most notably—all of the countries are some years away from a sustainable system of housing finance. The progress toward such a system is made more complicated by the high inflation rate, recent introduction of new currencies, and ongoing reforms in the banking sector in some of the republics.

Each republic inherited a housing finance system based on highly subsidized lending for purchase of cooperative units and self-help construction. At modest scales these programs are continuing. They cannot begin to serve the needs of a broader clientele of lenders, however, because they are financially nonsustainable without steady subsidy from the state. They are not based on recycling of savings. They also cannot function in an increasingly private economy because the loans are not secured by real property or land. In a market environment, it is not

clear that the banks could rely on any residual state coercion to enforce repayment of loans.

Given the economic uncertainties, any medium term financing would be more appropriate with adjustable rates. Methodologies for adjustable rate lending that have been developed in Eastern Europe and Russia are designed for highly inflationary environments, yet protect lenders from excessive rate increases. Educating policy makers and bankers about these systems may be an appropriate first step toward the evolution of sustainable mortgage financing at some point in the future.

TABLE 6.—Comparison of key elements related to housing development

| | Kazakh stan | Kyrgyz stan | Turkmeni stan | Uzbeki stan |
|---|--------------------|----------------|------------------|----------------|
| 1. Marketability of title | | | | |
| A. Is the ownership of single family dwellings freely available? | Yes | Yes | No | Yes |
| B. Is the right to the land freely alienable? | Ambigu ous | Ambigu ous | Ambiguou s | Ambigu ous |
| C. Are there undue administrative barriers to sale of buildings and transfer of lease rights? | Yes | Yes | Yes | Not clear |
| 2. Financing | | | | |
| A. Is there long-term lending for housing/ construction purchase? | Yes | Very little | No | Yes |
| B. Is this lending available on market terms? | No | No | No | No |
| C. Are there legal provisions for using residential buildings for collateral? | Yes | Yes | No | No |
| D. Are there provisions for foreclosure? | In draft law | No | No | No |
| 3. Access to land | | | | |

| | | | | |
|---|-----------------------|-----------|-----------|-------------|
| A. Can land be allocated for construction of housing for sale at market rates to: | | | | |
| 1.Existing enterprises | Yes | Yes | No | No |
| 2.Foreign investors | Yes | Yes | No | No |
| 3.Cooperatives | Yes | Yes | No | Not |
| 4.New companies | Yes | Yes | No | Not clear |
| 5.Individuals | Yes | Not clear | No | No |
| B. Does the city/state exact resemble a lease rate for new allocations of land? | No | No | Not clear | No |
| 4. Construction sector | | | | |
| A. Has the state initiated the breakup or restructuring of public construction companies? | Yes: joint stock | Yes | No | Intend s to |
| | Yes: foreign ventures | No | Not clear | No |

IV. COUNTRY STATUS REPORTS

A. UZBEKISTAN

Uzbekistan has made significant strides in officially privatizing the state housing stock. However, the creation of a true market in this stock lags behind. Management of the now-privatized housing appears at present to be a major concern of Tashkent City officials. Development of new housing has fallen significantly, but efforts are being made to enhance the role of cooperatives to fill the gap, although without addressing the lack of market forces and the inefficiencies within the current production system.

Uzbekistan has taken measures aimed at making a transition to a market-based economy. It has adopted a new constitution, as well as new laws relating to the privatization of state-owned enterprises, privatization of housing, formation of enterprises, and ownership of property. Certain aspects of the laws and their implementation, especially relating to land tenure and alienation of property, need significant improvement to achieve the goal of market-based private housing. While there is a long tradition of owner-built and financed housing, the legal framework for investor-driven housing production is embryonic.

1. Demographic and Housing Data

a. Basic Demographics. Uzbekistan is the largest of the former Soviet Asian Republics, with a population of 21,500,000. It is notably less urban than much of the former Soviet Union, with 60 percent of the population still living in rural areas. Tashkent, with a population of 2,130,000, is easily the largest city within all of the Central Asian Republics, and is the fourth largest city within the former Soviet Union. The population growth rate is 2.5 percent per year, one of the highest in the former Soviet Union. The average family size exceeds five persons.

b. Housing Stock. The total housing stock of the country consists of 5,472,000 units. Of this, 2,289,000 units, or 42 percent, are in multi-unit buildings of one sort or another. The balance are individual (single family) houses. The largest percentage of single family housing falls in urban areas and is only 22 percent of the stock in Tashkent. The overall housing stock data are shown below:

TABLE 7.—Uzbekistan housing stock

| Type of unit | Tashkent | 12 other regional capitals | Rural and other urban | Total |
|--------------|----------|----------------------------|-----------------------|-----------|
| Multi-unit | 591,000 | 535,000 | 1,163,000 | 2,289,000 |
| Individual | 170,000 | 318,000 | 2,308,000 | 3,193,000 |
| Total | 761,000 | 853,000 | 3,461,000 | 5,472,000 |

(Source: GOSKOMPROGSTAT, Government of Uzbekistan)

In part reflecting the needs of larger families, fully half of the apartment units are three or more rooms (excluding bath and kitchen), and only 19 percent are one-room units. The average unit size is correspondingly large at 55.1 square meters.

c. Housing Demand. Demand for housing is certainly high, as demonstrated by the length of the waiting list for public housing units. As in other republics, this is essentially a measure of the aggregate of the number of families doubled up, overcrowded (based on an area standard per capita), or in structures officially considered dilapidated and slated for renovation or demolition. However, with the slowdown in construction of new units, and especially state housing for distribution according to the waiting list, it is not clear that most families who would qualify for new housing under these guidelines are actually bothering to sign up.

The average number of persons occupying each unit, on the other hand, suggests that the gross number of residential units is relatively high. The average occupancy is 2.8 persons per unit in Tashkent and 3.8 nationally. This suggests that the problem is much more one of misallocation (i.e., as many families underhoused as overhoused) than absolute shortage. As seen elsewhere in varying degrees in the former Soviet Union, this is very much a product of the historic absence of real pricing for housing and an active market in resales. In short, the past system, which has only just begun to change, made housing a largely illiquid asset and thereby did not encourage its rational use.

2. Privatization of State-Owned Housing

a. Legal Basis. Uzbekistan first authorized privatization of state-owned housing in 1991, pursuant to the Law Concerning Denationalization and Privatization. Substantial privatization of housing in Tashkent began in late 1992 under the authority of Decree No. 378 of the Council of Ministers. This was superseded by housing-specific legislation: the Law on Privatization of State-Owned Housing, signed May 7, 1993. This law essentially empowered the cities to privatize the state stock. Tashkent is held up as a model of how to rapidly turn over the stock, and other cities are reportedly following suit.

The current law virtually provides for the voluntary privatization of all state- and enterprise-owned housing. The only exceptions are apartments of historical, architectural or cultural significance; housing in closed areas (e.g., military reserves); rooms in dormitories; uninhabitable apartments; and service apartments (e.g., guest houses). Privatization must be the unanimous decision of all "leaseholders," which is defined as all family members age 18 and over. The law does not require the party purchasing the unit from the state to reside in the unit, although nearly all purchasers are resident. No provisions are made for families on the waiting list, or for privatization by others than the legal tenants (i.e., no mention is made of any role for investors in the process). No particular rights to the land--either under or around the building--are defined in the privatization law.

After the person privatizes his/her apartment, it becomes either individual or collective property (collective includes "family"). Family members of the person privatizing the apartment have the right to occupy it and must agree to any transfer, sale, or lease. The rights conferred to a tenant upon privatization appear to be broad. According to the law, the owner may occupy the unit for residential purposes, offer it to others for use, give it away, lease it, bequeath it, or sell it.

Illustrating the country's struggle in moving toward a market economy, however, Uzbekistan's ministers imposed a 5-year moratorium on sales of privatized units. There appear to have been several motivations behind the moratorium. There is a concern that buyers are vulnerable to unscrupulous sellers. There is presumably some resentment of emigrants being able to "cash-out" of their housing for which they never paid a real cost. There is concern that the state is not effectively taxing these property transfers, missing out on substantial revenue. Notwithstanding these legitimate concerns, the effect of

preventing resales may ultimately be negative, in that mistrust of government reform is fueled, new owners are not exposed to market principles for housing, efforts to improve housing maintenance by devolving responsibilities to the owners may be undermined, and illegal ways are no doubt being created to circumvent the prohibition laws.

No challenge to the moratorium is pending in court. One explanation for this is that the procedural prerequisites to a case cannot be satisfied. For instance, the notaries who refuse to seal the documents necessary to transfer ownership of a unit in conformity with the Law on Privatization of State-Owned Housing and the Law on Property will not put their refusal in writing, a prerequisite to a legal challenge. Thus, they block the opportunity for the courts to hear the case.

b. Cost to Privatize State Housing .

Privatization is free of charge for members of special groups (i.e., groups that have expanded to include not only veterans but also various classes of professionals, such as scientists, educators, and day care and health protection workers). There is no official deadline to privatize one's unit, but with the uncertainties caused by rapid inflation and the change in currencies, the emphasis is on completing the process in a short period of time.

The overriding objective of the privatization program was clearly to put the stock officially in private hands, with other objectives, such as generation of revenue, secondary. About 40 percent of the housing was given at no charge to sitting tenants. For the remainder, the so-called balance cost was used. This is essentially the historic cost of construction, with some adjustment for depreciation, inflation, and location. Based on this system, the average unit price was in the range of 11-13,000 rubles. Although some financing was reportedly made available, at this low cost nearly all families simply paid cash for their flats. The total revenue raised by the privatization program in Tashkent was 1.3 billion rubles.

Although a land tax was adopted in 1993, as yet no property tax to owners of privatized units has come into effect. As a result, owners and renters pay essentially identical monthly charges (communal services fee to the Housing Exploitation Unit and utilities), since the "rent" payment itself has been thoroughly eroded by inflation.

c. Administering the Privatization Program .

Privatization of housing is carried out by the municipal

governments in Uzbekistan. They are in charge of privatizing state and much of the enterprise housing. The cities appear to have a fair amount of latitude in setting the bounds and procedures for their privatization programs. Proceeds from privatization are shared 75 percent to the city and 25 percent to the state.

d. Progress to Date. Housing privatization is proceeding rapidly in Uzbekistan, with Tashkent leading the way. Recent national data indicate that 45 percent of the state-owned apartments outside of the capital city have been privatized. In Tashkent the percentage is now reportedly at 98 percent. An additional stock of some 23,000 units owned by enterprises has been largely privatized under the same legislation.

The high rate of privatization of the Tashkent state housing stock over less than a year's time is extraordinary. It suggests, in fact, that state policy was not a neutral one of simply explaining privatization as a tenure option. Rather, privatization was presumably actively encouraged by the city as the appropriate response to the new legislation. This would suggest a dramatic endorsement of private ownership of housing, were it not for the parallel imposition of restrictions on alienating the asset, a fundamental feature of ownership, and the slowness of the city in addressing common ownership issues. A better explanation is that the city is intent on creating one dominant form of tenure to simplify administration. It is also the first step in a longer, but as yet not well-defined, effort to truly devolve ownership responsibilities, notably maintenance and financial burdens, from the city to the new owners.

Much of the housing stock of Uzbekistan was already in private ownership prior to the current privatization program. Single family housing is traditionally privately built and owned, and is the predominant form of housing in rural areas and a substantial part of the stock even in large cities. Due to the low payments for loans on cooperative housing (interest rates were only recently raised to 20 percent for loans of up to 15 years), many of the initial loans to individuals participating in cooperative housing projects have been repaid, creating a substantial class of owners of these units. With these factors taken into account, overall private ownership of housing is now in the vicinity of 75-80 percent nationally and 85-90 percent in Tashkent.

3. Maintenance and Management of Privatized Housing

The Soviet tradition of municipal management of the state housing stock continues to prevail in Uzbekistan. In Tashkent, 70

percent of the maintenance cost for privatized and nonprivatized units is borne by the city. This runs to 30 percent of the municipal budget. (The city plans to eliminate this subsidy over time.) The privatization law specifically allows for owners to contract with private firms for maintenance services. The city has yet to organize for this arrangement, and to date simply has had the new owner sign a maintenance contract with the corresponding housing exploitation office. Privatization of maintenance will require the formation of effective homeowner associations to pool maintenance funds and contract for services. Subsidies, which now run directly from the city to the 64 housing exploitation units, must be redirected to unit owners or owner associations, who can exercise market choice in procuring maintenance services. A final hurdle is the creation of homeowner associations to pool maintenance funds and procure services.

The laws governing privatization pay virtually no attention to the fairly obvious complications of privatizing apartment units within an otherwise state-owned building. The law is silent, for instance, on resident rights vis-a-vis common areas. No reference is made to commercial spaces. Although there clearly is concern about reducing the financial burden and improving the quality of building maintenance with respect to systems and common areas, the laws are silent concerning any resident ownership interest in these assets.

The law does note that maintenance and repair of privatized housing is to be performed under contract terms. In the case of partially privatized buildings, the preexisting decentralized housing exploitation units are identified as the sole vendor of these services, and new owners are required to pay the fees related to services and repairs of engineering equipment and common areas of the building in proportion to floor area of the apartment. (In addition, owners must pay for utilities that serve the building). At the same time, the law authorizes owners to form partnerships that can contract with repair organizations. The legal framework for such associations and for private apartment building maintenance companies would appear to already exist under the Law on Enterprises.

Despite the lack of concrete changes to date and the absence of a full legal structure for common ownership, the city of Tashkent does appear committed to creating "partnership organizations" as the basis of a new system for maintenance that would eliminate the current public monopoly. Such organizations, containing 10-15 apartment buildings each, are being organized in at least one of the 11 districts of the city. Some city officials envision

these organizations becoming condominium-like associations that would collect communal fees from the owners and pool these funds with state subsidies in order to procure services on a competitive basis. However, none of the details of this arrangement have yet been worked out.

One hurdle to overcome in devolving management responsibility to owners is the lack of established private enterprises for building maintenance. People are accustomed to hiring small contractors or individuals for repairs within the unit, and this field could be the embryo of a private maintenance industry, possibly in competition with the local city maintenance units for maintenance contracts.

4. Property Valuation and Registration

The ownership of privatized flats is computerized. All parties who privatize their units receive a certificate of ownership, which is registered with the Bureau of Technical Inventory (BTI), a centralized filing system. Theoretically, a private citizen could have access to BTI's files to verify that a person selling his unit is the actual owner (if sales were permitted). However, neither the Law on Privatization of State-Owned Housing nor the Law on Property expressly establish BTI's files as public records. Therefore, it is not certain that a citizen would be given ready access to the records.

Title registration for privately owned houses is handled differently. For example, for Tashkent the Department for the Supervision and Distribution of Dwellings (DSDD) is responsible for maintaining records on these properties. Records are kept on the floor plan, construction dates, original cost, and ownership changes for each property. When a property is sold, the parties must come to DSDD to get a sales permit, which then is presented to the public notary for notarization. New title documents are issued when properties are inherited. However, since evidence of title is seldom required (e.g., there is no way to pledge a property and there appears to be no system for placing a lien on a property), records are apparently often not updated.

Property valuation on market principles did not exist under the old system, and since independence has barely begun to evolve as a discipline and concept. The existing valuation system for purposes of establishing land lease rates, which are nominal, is based on a system of coefficients that take location and other factors into account as intended proxies of land value. Resale of apartments is currently limited to the cooperative housing stock, and some valuation based on market characteristics is

reportedly performed by the city in the course of calculating a 10 percent transfer tax. The apparently thriving market in resales of cooperative units is the genesis of private sector expertise in property valuation.

5. Land Tenure Issues

The Constitution of Uzbekistan was adopted in December 1992. It establishes a tripartite governmental structure, separates power between the executive and legislature, and creates an independent judiciary. The Constitution expresses Uzbekistan's commitment to a market economy:

The economy of Uzbekistan, evolving towards market relations, is based on various forms of ownership. The state shall guarantee freedom of economic activity, entrepreneurship and labor with due regard for the priority of consumers' rights, as well as equality and legal protection of all forms of ownership. (Art. 53)

It declares the sacrosanct nature of private property and describes how private property can be used:

Private property, along with other forms of property, shall be inviolable and protected by the state. An owner may be deprived of his property solely in the cases and in accordance with the procedure prescribed by law.

An owner shall possess, use and dispose of his property. The use of any property must not be harmful to the ecological environment, nor shall it infringe on the rights and legally protected interests of citizens, juridical entities or the state. (Art. 53 and 54)

The status of land in Uzbekistan is expressed in the Law on Property. It states:

The land and its soil and mineral resources, internal water basin, flora and fauna, air basin (space) within the boundaries of the Republic ... are the exclusive property of the Republic of Uzbekistan. (Law on Property, Art. 24)

The Law on Property reiterates the constitutionally granted right to private property. It outlines five forms of property: individual, collective, state, mixed forms, and property of joint ventures. It provides that an owner "on his own will effects the

right to own, use, and command the property belonging to him" (Law on Property, Art. 2). He has the "right to hand over his right to own, use, and command the property to other persons." (Art. 3)

The Law on Property, along with the Constitution, guarantees the "inviolability and equal conditions for the development of all forms of property." However, the state's guarantee of the inviolability of property is not as strong as possible. The Constitution does not outline any standards for governmental confiscation of property that would limit confiscation provisions of a new law. As a result, the Law on Property's statement that "forced confiscation of a property from its owner is not permissible except in cases stipulated by the Law" (Art. 37) does not provide a person or legal entity with any true safeguard against government takings. It only provides for compensation, either voluntarily or by court decision, "for losses incurred by a proprietor as a result of the adoption of Legislative Acts for the Republic which discontinue the right of property." (Art. 37.2).

The Law on Property provides for home ownership. It states that "Citizens can own dwelling houses, country houses, garden houses, plantations on the plot of land..." (Art. 7.1). In fact, it asserts that "Citizens are granted plots of land ... for the construction and maintenance of dwelling houses..." (Art. 6.3). It grants citizens hereditary life tenure in such plots.

The Law on Property describes the rights an owner has in his home. He can "sell, divide, lease, and carry out other deals which do not contradict the Law." (The current moratorium on resales of privatized units would appear to conflict with this provision.) The Law on Property describes the right to private property as the "right to own land privately, and use and manage one's property with the aim of making a profit out of it" (Art. 8). This seems to give an owner broad rights to alienate his property and to make an income from its use, appropriate in a market environment.

These rights, however, are limited by the state, particularly in relationship to real estate. By not identifying "the law" which an owner's activities may contradict, the Law on Property instills insecurity into an owner's rights. In addition, strictly speaking, making a profit on the sale of an interest in real property or on the sale of one's home might not be permitted because it could be considered "speculation," which is punishable under the criminal code. This prohibition on making money from the transfer of an interest in land or a home contrasts with the

law's support of making an income from one's labor, enterprise, or intellect.

Another potential flaw in Uzbekistan's Law on Property is the amount of latitude given to local officials to implement it. At times, local implementation can undermine the purpose of the law. In the absence of an effective process for reviewing such implementation of the law, citizens' property rights can be negatively affected. A recent example concerning garages is illustrative in this regard. Under the Soviet system, a citizen could obtain a small plot of land from the local administration (Hakimiat) for the construction of a garage. Once given a garage plot, it was rarely taken away. After the adoption of the Law on Property, the Hakimiat notified all garage owners that they must come to the district office to register the garage. Now, the Hakimiat will grant only temporary use tenure for the garages, and reserves the right to terminate the use at any time, to tear down the garage, and even to keep the construction materials.

By this example, the Law on Property and the postindependence reforms could be viewed as establishing the government's right to property and to arbitrary conduct of its relations with the citizens, rather than establishing and protecting the citizens' property rights. Without intending to withdraw property rights, such conduct can stir a lack of confidence in government, undermining genuine reform efforts.

Cities may allocate the right to use land for an indefinite term. A fundamental principle of this system is that the state takes back the land if it is not used in accordance with the stated purpose for allocation (e.g., to build one's home) over a specific period of time. Single family housing is typically developed under indefinite use right provisions, which are perceived as quite secure by homeowners, notwithstanding the limitations noted above.

Under the current system there is an active market in sales of existing houses, especially in areas not slated for redevelopment, evidence of the strong de facto tenure rights for preexisting housing. The system is at odds, however, with private entrepreneurial investment in housing for rent or sale to others, as opposed to occupancy by the builder. The legal problems in this regard are not yet well appreciated, perhaps because the process of private investment in housing for other than occupancy is itself a new concept not well comprehended.

In sum, the status of private property, particularly when associated with land, is ambiguous in Uzbekistan. The provisions

of numerous laws address the same topics in sometimes conflicting ways. Underlying this confusion is Uzbekistan's attachment to the fundamental principle that all land belongs to the state. Notwithstanding the country's steps toward privatization, this principle appears at this point unlikely to change. Land can be neither bought nor sold, nor can ownership of the parcel be pledged as collateral. Land may be leased only for purposes specified in the lease, and ownership of improvements appears to be subject to negotiation in each case.

6. Housing Finance

Long-term heavily subsidized housing finance continues to exist for the benefit of the individual family. The State Savings Bank, which offered housing loans in the Soviet era, initiated a new lending program in August whereby a family can borrow up to 200 times its monthly salary at 20 percent for up to 30 years for house construction, repairs, or purchase of a cooperative flat. This is not a sustainable program absent the infusion of state capital. Moreover, no collateral is pledged in the loan agreement.

In 1992, Uzbekistan adopted a law on pledge and collateral. It authorizes interests in land (but not the land itself), improvements, future products, and future crops to be collateralized. As a practical matter it is believed that a citizen's pledge of an interest in land or an improvement could easily be undermined by capricious government actions terminating the interest in the land.

7. New Housing Production

a. Land Allocation. In Uzbekistan, the process of land allocation is comparable to that in other republics of Central Asia, and is essentially a continuation of the Soviet system. The local Soviet, or *Hakimiat*, has the authority to allocate plots in its jurisdiction. Allocation is according to use, at the discretion of the Chief Architect or other official in accordance with the General Plan. The applicant's needs or preferences are considered in the context of the plan. The price of the land is calculated according to a formula that takes into consideration the location, infrastructure, and other factors. A lump sum payment is made for the indefinite use of the site. The applicant has no right to transfer his/her interest in the land. The city can evict the tenant if it wants the land for another purpose, subject to the Law of Property's mandated compensation.

b. Individual Housing. The Constitution and the Law on Property allow individuals to possess their dwellings. Under the Law on Property and the Law on Housing Privatization, an individual may even own two dwellings. Hereditary life tenure is typically granted. The laws authorize an owner to lease, bequeath, or sell his/her home.

A curious feature of Uzbekistan's law is that it allows a citizen to own two dwellings, although a citizen may privatize only one state-owned unit. A person who owns two homes can lease or sell one of them and could use this cash for other enterprises. In fact, in Tashkent there are people who are using the right to own two houses as a business opportunity. On the second plot, they have built a residence which they are renting out. Here we see a kernel of entrepreneurial activity in residential real estate construction.

There are immediate limits to this modest entrepreneurial activity. As mentioned above, there is the prohibition against "speculation"; i.e., a person is not supposed to make a profit. In addition, a recently privatized dwelling may not be sold due to the moratorium.

c. Multifamily Housing. It is not clear whether Uzbekistan intends to withdraw even partially from the apartment construction business. State-owned construction industries have not been privatized, although little state-funded construction is occurring. Unfinished buildings dot the urban landscape. The Hakimiat will auction four unfinished residential buildings started in April and financed by the State Industrial Development Bank.

The primary activity in multifamily residential construction emanates from the housing cooperatives. Out of 113 apartment buildings reportedly built this year, 70 were built by housing cooperatives. The legal framework for housing cooperatives is from the Soviet era and is common to all former Soviet Republics. Essentially, a number of people associate with each other for the purpose of arranging the construction of an apartment building. In the past, the group probably would have been arranged through the place of employment or through some other preexisting organization. Each family would contribute 10 percent of the construction cost and would be granted credit from the Industrial Development Bank for the other 90 percent. The site would be selected by the municipality and the building would be designed and constructed by a state-owned housing construction enterprise. Each member of the cooperative would repay the housing

construction enterprise, which would repay the bank over 20 years.

Housing cooperatives are still active in Tashkent. The function of organizing the group seems to be performed now by a quasi-governmental organization, "Farisse." It is not an entrepreneurial operation. The proposed shift to cooperatives as a proposed major provider of housing does not in and of itself indicate any fundamental change in how housing is built. Cooperative projects follow the same path to implementation as state projects. The cooperative continues to go through the preexisting system of applying to the city to be assigned a site and using one of the city's design institutes and the prescribed city construction company based on the type of housing planned (e.g., number of stories).

The laws on property, leasing, and land provide a workable framework for single family, nonspeculative construction. The Law on Enterprises would appear to permit the small private construction companies that heretofore have built most of the private individual houses to take on apartment construction for public or private clients. The Law on Leasing could permit the long-term leasing of a plot of land for a lawful purpose authorized by the lessor. The Law on Collateral could allow the interest in the lease to be the security for the loan. However, there is a lack of experience, or intent, to use these laws constructively to effect speculative private investment in housing. The vagueness of the laws relating to tenure, the lack of protection against confiscation of property, the discretionary process for land allocation, and the absence of a viable law or system of mortgage lending inhibit entrepreneurial activity in the real estate sphere.

Given the many difficulties, it is not surprising that the data for Tashkent suggest that new residential construction has dropped by about 50 percent since 1991, with perhaps only 8,000 units to be completed this year. State housing is expected to account for only 20 percent of this sum, with 70 percent coming from the cooperative sector and enterprises. The comparable split in 1990 was 60/30 (private construction of individual houses continues to account for about 10 percent of additions to the stock).

One interesting note is that existing state enterprises are reportedly finding ways to build for a market in exchange for setting aside a number of completed units for the municipality to allocate. These arrangements appear to be more driven by convenience than design, as enterprises look for new

opportunities and cities, strapped for cash, look for alternative means to continue to offer at least some additional housing for those on the waiting list.

There may be some slow reform of the construction sector in progress. The large state-owned firms plan to become joint stock companies, with 51 percent held by the city or state. However, these firms specialize in high- and mid-rise housing, typically use outmoded and inefficient technologies, and may find it difficult in their current configurations to adapt well to smaller scale projects using alternative designs. At the other extreme, private companies are active in the single family housing market but as yet have not had opportunities to build on a larger scale.

8. Protection for Low-Income Families

By privatizing the bulk of the housing stock, the city has been able to postpone for a time the need to erect a social safety net for those who otherwise would be incapable of paying higher rents. The relatively small number of units not privatized are reportedly largely the homes of the elderly and indigent, and the city may simply freeze rents and communal fees for this population, in effect creating a safety net, albeit a poorly targeted and noninclusive one. No specific plans are evident to construct a safety net for those in private housing who will see their utility and communal fees rise.

B. KYRGYZSTAN

Two years after declaring its independence, Kyrgyzstan is leading the Central Asian Republics in political and economic reform. Kyrgyzstan's constitution, its laws relating to privatization of state-owned enterprises, privatization of housing, formation of enterprises, and pledge and mortgage of personal and real property mark the shift from communism to a more open political and economic system. These steps are a good foundation for further change and growth. Yet, Kyrgyzstan's laws and procedures relating to land tenure and land use do not reflect a similarly progressive approach to speculative real estate development.

1. Demographic and Housing Data

a. Basic Demographics. Kyrgyzstan's population, according to the 1990 census, was 4,365,000, of which 62 percent was rural and 38 percent urban. By far the largest city is the capital, Bishkek, with a population of 625,000. The birthrate is high; the average family size is 4.7. Just over half the

population is ethnically Kyrgyz; nonKyrgyz groups, including Russians (20 percent), Uzbeks (13 percent), and smaller percentages of Ukrainians, Germans, and Koreans form a majority in urban areas.

In the last 3 years, over 200,000 citizens, predominantly Slavs and Germans, have reportedly left the country. This emigration has had a significant effect on the reform of the state housing sector. Since state housing is concentrated in urban areas, the majority of people reselling privatized apartments (and reaping windfall profits) have been departing nonKyrgyz. As a result, ethnic divisions have influenced political debate over housing policy.

b. Housing Stock. Total housing stock comprises some 56 million square meters of total building area (40 million square meters of living area), divided into 851,000 units. The average living area per unit is about 47 square meters. Available statistics for 1992 put the total number of households at 888,000. Due to the substantial migration since then, the preexisting housing shortage may actually have been ameliorated in the short term. In 1991, before the start of large-scale housing privatization, ownership of the country's housing stock was divided as follows: private, 74.5 percent; municipal, 9 percent; enterprises and institutions, 10.6 percent; ministries and other budget organizations, 2 percent; and cooperatives, 2.5 percent. Private ownership in urban areas, however, was far lower.

2. Privatization of State-Owned Housing

Carrying out its constitutional pledge to promote the fulfillment of the right to housing, Kyrgyzstan adopted the Law on Privatization of the Housing Fund in December 1991. The Law provides for transfer of the ownership of all state and municipal housing, apartments, and multiple dwellings to the citizens of Kyrgyzstan. This includes housing owned by state-owned enterprises. Certain units are not subject to privatization, including apartments not meeting established sanitary standards.

Privatization is voluntary. The tenant of an apartment or dwelling house is entitled to privatize the unit, provided the tenant has the written consent of all adults living there. A person on a waiting list for housing also has the right to obtain a privatized unit. The tenant does not have to be a citizen of Kyrgyzstan to buy a unit. Privately held legal entities, persons without citizenship, foreign citizens living in Kyrgyzstan, and foreign citizens and legal entities living outside of Kyrgyzstan

(in accordance with the priorities established by Kyrgyzstan) also may buy apartments and dwelling houses.

Certain categories of housing (including hostels, dormitories, and buildings of historical importance) are exempt from privatization. The state also plans to maintain a stock of state "social housing" for continuing subsidized rental. Estimates of the eventual size of this social stock vary from 15 to 25 percent of the original state housing stock. The state has not yet established the specific procedures for preserving the state stock.

a. Cost to Privatize State Housing. Under the law, privatization is free for many, including the following categories of citizens:

- Veterans and families of disabled veterans and soldiers killed or missing in action
- Families of officials killed in the line of duty
- Families with four or more children
- Victims of the Chernobyl nuclear disaster

Administrative amendments to the law expanded the categories of persons entitled to free housing to include health care workers and educators. According to one report, as much as 80 percent of all state-owned apartments are being transferred for free to tenants who fit the various defined categories. Other groups are petitioning to be included in the free-housing category. If all such requests are granted, 98 percent of the remaining tenants reportedly could be eligible for free transfer of their units.

In addition to authorizing a high percentage of free transfers, the law authorizes a "special means of payment" (SMP). The SMP is a voucher-like benefit intended to be issued to every citizen. The SMP amount depends on the citizen's age, years at work, and average salary. An SMP can be used toward the purchase of a state-owned dwelling or an enterprise. Apparently, most citizens who did not receive their apartments for free chose to pay cash for their units. At least one reason why a citizen would choose not to use the SMP for housing is that it potentially restricts their right to resell the unit.

The privatization law does not establish the actual purchase price of state-owned dwelling units (for those not eligible for free privatization). That task is delegated to local commissions with input from financial institutions, businesses, and local soviets. The purchase price for each apartment is based on its "balance cost," which is the building's original construction

cost in 1984 prices (roughly 200 rubles per square meter), minus depreciation, and factoring in location and inflation. (The balance cost for an apartment may be, but apparently never is, contested). Using this basis, the average apartment price for transfers through March 1993 was about 9,000 rubles. The average price since that date has reportedly more than doubled. These figures pale in comparison with resale prices (October 1993) for a typical two-bedroom apartment in Bishkek, which are in the 4- to 6-million rubles range.

b. Administering the Privatization Program. The agencies responsible for conducting privatization are the pertinent agencies of the Soviets of Peoples Deputies (equivalent to a local city council) and the enterprises, organizations, and institutions to which the apartments are assigned.

The privatization law provides a mechanism for registration of ownership. The agreement to privatize the unit must be certified by a notary and registered in the local notary's office. The agreements also are filed in the Bureau of Technical Inventory (BTI), a centralized filing system. Each owner receives a certificate. Theoretically, if a subsequent purchaser of a privatized unit doubted the authenticity of a seller's certificate of ownership, he could check the notary and BTI files to verify that the person selling the unit is the actual owner. However, neither the privatization law nor any other law expressly establishes the notary's or BTI's files as public records. Therefore, it is not certain that a citizen would be given ready access to the records. Although this would appear to be a concern, given the infancy of the market in previously privatized housing, this is as yet not an issue in Bishkek.

Privatization of existing units to sitting tenants is carried out mainly at the municipal level, typically through a municipal housing privatization office. Municipalities have also involved themselves in resale of units, through 1) registration of ownership changes and collection of transfer taxes (currently running at 10 percent of assessed value, which approximates actual market value, as determined by a state taxation commission); 2) establishment of Centers for Sales and Purchases of Houses, which, for a commission, perform something akin to real estate brokerage functions; and 3) on an experimental basis in Bishkek, purchasing units at market rates for use as social housing (subsidized rental for targeted groups) or resale to selected families. Bishkek's experimental program, for which some 300 million rubles have been appropriated by the government, is just starting and so far has purchased and reallocated only 10 apartments. Privatization of enterprise housing, (which has

proceeded more rapidly than that of the municipal stock) has been carried out for the most part by individual enterprises.

The State Property Fund is promoting privatization of partly finished apartment blocks. In Bishkek, which by October 1993 had privatized some 20,000 apartments, there are over 2,000 units in unfinished buildings. After rather unsuccessful attempts to sell buildings and units at auction, the State Property Fund has recently begun a program of soliciting fixed-price private sector proposals for building completion and disposition. The state evaluates the proposals on the basis of the overall development program and business plan. Development rights to some 40 buildings have so far been sold throughout the Republic. Most of the finished units in these buildings will be sold on the private market.

c. Rights of Ownership. According to the privatization law, the new owners of privatized housing may "possess, enjoy and dispose of [their respective apartments or dwelling houses] as they see fit and have the right to sell, bequeath or lease the property..." Under the current law, no waiting period is required following privatization before an owner can sell his/her unit.

In the spring of 1993, before the adoption of the Constitution, the Parliament adopted an amendment to the Housing Privatization Law, which the President vetoed, that would have imposed a 5-year moratorium on sales of privatized apartments. At the same time, it would have mandated that all units be transferred for free. This amendment was apparently motivated by a desire to preserve more state-owned housing and to prevent nonKyrgyz living in Kyrgyzstan from benefiting from the sale of their units before emigrating.

The moratorium was expected to be reconsidered in the session of Parliament that commenced December 7, 1993. In order to become law, the Parliament would have to override the President's veto by a two-thirds vote, an outcome considered unlikely. Even if enacted, it is possible that the amendment would be challenged in the Constitutional Court as an infringement on citizens' constitutional right to sell their property. Those in favor of the amendment might argue that the Constitution differentiates between housing and other private property, so that the protection afforded private property by the Constitution does not extend to housing.

d. Progress to Date. Even during the Soviet regime, Kyrgyzstan's housing stock remained mostly privately

owned. Private units (including cooperatives) accounted for some 74 percent of the total in 1991. The state stock (units belonging to municipalities, as well as ministries, state enterprises, and public institutions) comprised some 240,000 units at the time of independence in 1991. Prior to independence, nearly 15,000 units had been privatized under Soviet law. The privatization laws enacted in January 1992 greatly sped up the process. The greatest progress was made in 1992, when more than 30,000 units (13.8 percent of 1991 state stock) were privatized.

With the uncertainties and political conflicts reflected in the Parliament's approval of a resale moratorium in March 1993, the pace of privatization has slowed. Slightly more than 12,000 units were transferred during the first 9 months of 1993. By October, 24.5 percent of the total state stock had been privatized, bringing the amount of private housing to over 80 percent of the total housing stock of Kyrgyzstan. Of the various classes of state housing, privatization of enterprise-owned housing has proceeded fastest.

3. Maintenance and Management of Privatized Housing

To date, Kyrgyzstan has proceeded unevenly in turning housing management and maintenance responsibilities over to the new owners of privatized apartments, a reform necessary to consolidate a market-based housing sector. Some progress has been made in revising rental, maintenance, and utility charges in an effort to limit the growth of public subsidy and to begin to expose owners to real costs.

a. Movement Toward Real Pricing. Before 1993, housing charges covered only a small fraction of the actual cost of services. The Bishkek city administration estimates that for 1992, 80 percent of the 2 billion rubles it spent on communal services (housing maintenance and utilities) was covered by state and municipal subsidy, 15 percent by commercial rents, and only 5 percent by tenant payments. In late 1992, communal services costs (led by costs of utilities) began to rise dramatically. In October 1993, average monthly charges stood at some 3,100 rubles for a two-bedroom apartment (about 55 percent of the current average monthly wage). The government planned to raise rents in December 1993 by a factor of five and total communal services charges by 50 percent. Under this price reform, rent will account for up to one-third of total monthly housing costs. Until now, renters and owners have continued to pay nearly identical total monthly charges. The rent increase should increase the incentives for privatization.

Such drastic rises in housing costs have been, and continue to be, politically problematic. The proposed rent increase was expected to be fiercely debated in the December parliamentary session. Fear that homeowners would ultimately have to pay unsubsidized housing costs (while renters' costs would continue to be subsidized) was apparently another factor in slowing the pace of privatization.

b. Status of Common Areas. While the privatization law authorizes the transfer of ownership of units from the state to the tenants, it does not require the transfer of all units to private ownership nor does it provide for the transfer of ownership of common areas. Thus, it appears that the state will remain in the housing business both as the owner of unprivatized apartments and, less clearly, as the legal owner of the common areas.

Despite the law's vagueness regarding ownership of the common areas, it clearly addresses responsibility for their maintenance and repair. The owners must contribute to the maintenance and repair of the building as well as of common areas and grounds. At the same time, the law says that state organizations must continue to maintain and repair buildings "regardless of the number of privatized apartments" in them.

The owner's obligation to maintain the premises is addressed in the transfer agreement executed by the tenant when he/she purchases the apartment. The agreement designates the Housing Exploitation Trust (GhEK) as the agency to provide maintenance services for the unit. GhEK, a government entity, maintained state-owned housing prior to privatization. Under the purchase agreement, the owner must agree to pay a monthly maintenance fee to GhEK.

c. Framework for Common Ownership Associations. The privatization law anticipates that the owners might want an alternative to GhEK. Article 12 authorizes owners to form "economic associations or partnerships" to maintain and repair their housing, but only when all of the units in a building are privatized. Such associations could enter into private contracts for the operation of housing and for repair and construction. They could contract with state and municipal organizations or with other organizations. According to the law, disputes between owners associations and the housing operation or other organization must be resolved through court procedures.

The legal framework for such associations and for private apartment building maintenance companies was established under

the 1991 Law on Enterprises, which authorizes the creation of private enterprises which "fulfill work and render services." The enterprises may be joint stock associations or other economic associations or partnerships, but they must be accountable for costs. Thus, the legal infrastructure exists in Kyrgyzstan for the establishment of owners' associations comparable to our condominium associations, and for the creation and hiring of private maintenance companies.

In part, no doubt, due to the lack of a legal framework for nonstate-owned management and maintenance of hybrid buildings (part rental, part owner-occupied), no condominium-like associations have been formed. A few are reportedly in the process of being formed, but without any official encouragement. Municipal organizations continue as the only providers of major services to buildings, although small-scale private provision of apartment repairs and services is growing, since repairs within the unit are now clearly the responsibility of owners.

The way in which municipal maintenance units are organized and financed is changing. In Bishkek, maintenance units operating in areas with a high level of privatized apartments have themselves been designated for privatization (to operate without subsidy and with the right to expand profitable activities). These units collect a maintenance fee directly from apartment owners. Maintenance fees currently cover one-quarter of the maintenance unit's budget. The success of these privatized maintenance units will depend on some combination of increasing charges for residential maintenance and cross-subsidizing residential maintenance with income from commercial leasing or operations. Growth of private maintenance and management firms, and their ability to compete with or replace municipal units, depends on the future development of active building associations.

4. Property Registration and Valuation

Kyrgyzstan inherited the Soviet-era system of property valuation and registration, in which records for land and buildings were kept separately, land had a purely nominal value, taxes were extremely low, and market transactions were minimal. The need for reform is clearly understood, and certain promising steps have been taken.

A variety of registration procedures currently exist due to the lack of a central filing system. Documents indicating ownership of a privatized apartment must be filed with the notary and the BTI; mortgages must be recorded with the Land Registry. Leasehold agreements and other documents conveying an interest in

land do not have to be recorded. No system exists for reliably maintaining a cumulative record of changes in title or for recording liens, security interests, easements, and other encumbrances on the title and use of property. Not only are the records incomplete and maintained by different bureaucracies, they are also virtually inaccessible to the public.

The State Board on Land Inspection has been made an independent agency, authorized to clarify land rights and systematize land cadastre and other records; it deals mainly with rural areas. A parallel function is carried out in Bishkek by the chief architect's office. A Land Development Agency is being formed; its function will be to unify land and building records and to foster effective development decisions.

With the growth of housing market activity and rising real estate tax rates, the state has begun to accurately track market housing prices. Appraised values, established by the State Statistical Commission on fairly summary grounds, are currently in use for levying the 10 percent housing sales tax.

5. Land Privatization and Tenure Issues

a. Legal Issues. The Constitution, adopted May 5, 1993, expresses Kyrgyzstan's fundamental values regarding land, private property, and housing. It states simply: "The land, its subsoil, water, air space, fauna and flora—all natural resources [are] the property of the state....The purchase and sale of land [is not] allowed." Although the citizens of Kyrgyzstan may not own land, they and their associations may "possess" land in the sizes and according to the procedures prescribed by law.

Under the Constitution, citizens also are guaranteed private property as an "inalienable human right." This guarantee commits the state "to defend the right of its citizens and legal entities to own property." It mandates: "Property [is] inviolable. No person can be deprived of his property...against his will [except] by the decision of a court."

The Constitution distinguishes housing from the land and property. Unlike land, housing is not owned by the state. Unlike personal property, housing is not proclaimed to be inviolable. Yet, the Constitution grants citizens the right to housing in these words: "The state promotes the fulfillment of the right to housing by giving and selling state-owned housing [and] by encouragement of individual house building."

Arguably, housing is a form of property entitled to the same protection as other forms of property, the right to which is inviolable. Without answering this constitutional question, the laws relating to housing treat housing as a form of property belonging exclusively to its owner, without any rights reserved for the state.

While the power to make decisions about the allocation and use of land rests with the state and is locally exercised by the soviets, the soviets are constrained in the nature of land rights they may give. The Land Code and the Leasing Law, adopted prior to the breakup of the Soviet Union and still in effect, define several different forms of tenure that apply to urban and rural land. Individuals can obtain hereditary life tenure, long-term (more than 5-year) leaseholds, and short-term leaseholds.

Hereditary life tenure allows an individual to possess and use a plot of land and to bequeath it to his/her heirs. Leaseholds are for a specific term, with automatic renewal for the same term and on the same conditions unless otherwise stated in the lease. Whether a very long-term lease of 49 or 99 years would be granted is unclear. The distinctions among the types of leasehold interests familiar to us, such as net leases, ground leases, or mortgageable ground leases, are not identified in the law.

Since privatization, Kyrgyzstan has been turning to individual home construction to satisfy more of the housing need. It adopted a Law on Single Family Construction to control the allocation of lots for individual homes. Land is allocated for free to persons on the waiting lists and at the discretion of local authorities to other citizens. The only compensation required is payment of an annual land fee, a fairly nominal form of property tax.

The soviet's grant of tenure is always tied to a particular use. Each grant of hereditary life tenure or lease specifies the use permitted for the property in detail. For example, assuming the level of detail specified in Kyrgyzstan is the same as it is in other Republics, land would not be leased simply for agricultural purposes, it would be leased for growing cotton. It might even be leased for growing a certain minimum amount of cotton. Failure to grow the specified amount or growing a crop not expressly permitted would be a breach of the lease and jeopardize the lessee's tenure. The impact of an unauthorized use of property in an urban setting would be the same. If a person were granted a plot for a particular business, use of the plot for a different business could abrogate the grant, potentially

subjecting the lessee to eviction if he/she did not correct the violation.

b. Context for Individual Housing Construction .

Within the legal framework, an individual or a family could be granted several different forms of tenure to a plot on which to build a home. Under the Land Code and the Law on Leasing, the grant could be for hereditary life tenure or for a specified term under a lease. Under the Constitution and the Law on Property, it appears that a family could be given rights tantamount to fee ownership, provided the property were used for residential purposes.

The Constitution and the Law on Property appear to convey such rights through the characterization of housing as property instead of as land. The Constitution authorizes the state to give citizens plots of land without specifying the tenure. Once the home is built on the plot, the Constitution and the Law on Property grant the individual the right to sell the house (as personal property) without restrictions. Under the Law on Property, the right to use the piece of land is automatically transferred along with ownership of the house, without requiring special governmental approval. Thus, by focusing only on the rights to the house without addressing the question of the land tenure, the Constitution and the Law on Property effectively give citizens something akin to fee ownership in the land.

c. Recent Initiatives. In Kyrgyzstan, as in the other Central Asian Republics, resistance to private ownership of land is cultural as well as legal. Urban land-use rights continue to be allocated primarily through the inherited Soviet system. Application is made through the municipality; nontransferable, conditional rights are assigned by the Chief Architect according to the general plan. Lease payments are nominal and tax rates are low. Several recent initiatives have been taken, however, toward formation of a market-driven land development sector, despite the limitations in the current legal structure:

- Citizens on municipal housing waiting lists have been offered building plots for self-build housing, generally on unserviced suburban sites. Resources are not yet available to service these sites or to provide owner-builder financing. Work, therefore, goes on fitfully, and few units are now occupied.
- The State Property Fund's current effort to solicit RFPs for unfinished buildings shows willingness to use a vehicle well-suited to urban land development. The municipality, as

owner of urban sites, can define development programs, call for proposals from private firms, and perhaps take part in a public/private partnership for leasing and financing arrangements. Since the State Property Fund deals only with buildings, not land, it has no plans of its own to extend the use of this development mechanism.

- The Chief Architect of Bishkek has produced a development program for a small site in the city and called for proposals. This project has not yet reached contract stage.

Adverse economic conditions may make profitable land development difficult and thus may undermine municipal offerings. Judging, however, from the relative success of the State Property Fund's sale of some unfinished buildings, the market may, in fact, support profitable development, even under present circumstances. Further experiments along the lines begun by Bishkek's Chief Architect, for either residential or commercial development, might well be in order.

6. Housing Finance

Kyrgyzstan's Law on Pledge (adopted in March 1992 and amended in December 1992) is a useful starting place for the evolution of mortgage lending for individual homeowners and for speculative residential real estate development. The law authorizes that existing buildings and interests in land (such as a leasehold) can be used as loan collateral while remaining in the possession of the borrower, calling that kind of mortgage "hipothec."

The law provides for the right to mortgage land in conjunction with the mortgage of a building, but not for the mortgaging of land or an interest in land separate from the pledge of a building or structure on the land. It does not provide for the mortgaging of vacant property. The law provides for risk of loss, authorizes the parties to obtain insurance, alludes to rights of the lender upon default of the borrower, allows the borrower to pay the entire loan to prevent foreclosure, and mandates court supervised foreclosure procedures. In the case of default, liability extends to all property owned by the borrower, not just the mortgaged property.

The pledge law also establishes minimal formal registration requirements for the hipothec mortgage agreement. Such a mortgage must be "notarially certified" and filed in the Land Register. Registration data must include owner of the mortgage, the object mortgaged, the amount of the mortgage, and the time when the mortgage-secured obligation should be met. The mortgage

is not considered effective until it is registered. Noncompliance with the requirements related to the format of a mortgage contract nullifies the contract. In addition, the mortgagor must maintain a record of the mortgage. The mortgage registration book must be accurate and up to date. Registration information is available for public review.

While providing a starting point for a mortgage-lending system, the Law on Pledge needs clarification and refinement, notably in the following areas:

- Addition of nonrecourse mortgages and limitation on borrowers' liability
- Authorization of subordination and recognition agreements to be entered by the landowner (the state) and honored by the lenders
- Addition of consumer protection provisions
- Authorization of notice and the opportunity to cure defaults
- Adoption of borrowers' right upon default and fair foreclosure procedures

Moreover, the law frequently undermines its own efficacy by subjugating its provisions to the terms of any other contract, the present law, or other legislation.

As a practical matter, the flaws in the Law on Pledge are not having much of an impact yet. No lending is occurring, collateralized or noncollateralized. The 1992 Decree on the Functioning of Economics in the Republic of Kyrgyzstan mandated that the National Bank provide credit for cooperative and individual housing, but did not appropriate any startup funds.

a. Status and Outlook. The former Soviet system of housing finance, involving heavily subsidized credit to enterprises and cooperatives (and on-budget expenditures through ministries and municipalities), has for the most part ceased to function, and commercial lending for construction and mortgages has scarcely begun. Yet building does continue among all housing types (1993 projected total housing production is 50,000 square meters, perhaps 40 percent that of 1991).

Most current building is by private owner-builders, and is accomplished incrementally, using savings and informal financial networks. Existing enterprises provide their own capital for building. Some enterprises appear to have discovered the market potential of building and selling apartments. As inflation begins to abate, such projects may be able to attract commercial lenders.

The Soviet financing mechanism is still basically in place. Residential house-building cooperatives, which have traditionally functioned through heavily subsidized short- and long-term credit, continue to operate on a modest scale. Market-rate lending for construction or acquisition does not yet exist. The numerous new or reformed commercial banks are currently concentrating on short-term commercial lending (less than 6 months) at interest rates as high as 400 percent.

7. New Housing Production

A legal framework for entrepreneurial housing construction (single or multifamily dwellings) can be patched together for use on an ad hoc basis. The current laws and procedures, however, do not naturally create a smooth system for entrepreneurial construction or a smoothly functioning real estate market.

a. Self-Help Housing. In Bishkek, the municipal government has begun to look to the free allocation of small, unserviced building plots as a low-cost response to the continued shortage of housing and the problem of illegal squatter settlements. A special program called ASHAR has been initiated, which anticipates the provision of free building sites along with low-cost construction loans for self-help housing (construction procured directly by the future occupant, or even carried out incrementally). Nearly 23,000 hectares of land have been distributed around the city for building plots. But construction costs are prohibitively high and available subsidies are insufficient to stimulate much construction.

b. Entrepreneurial Residential Construction . Entrepreneurial residential real estate construction in Kyrgyzstan has two potential sources: privatized state-owned construction enterprises and newly formed private construction or real estate development enterprises.

Prior to privatization, two large ministries controlled building construction in Kyrgyzstan, one handling construction in Bishkek and the other construction in the provinces. With the transition, these were converted, in effect, from ministries to holding companies with a mandate to privatize themselves. The entity associated with Bishkek split into two organizations, one concentrating on industrial buildings and the other (AZAT) on residential construction.

Reportedly, AZAT is building apartments in the micro-district Uchkun on a nonspeculative basis. Plans call for one- to four-room apartments and separate cottages on quarter-hectare plots.

It appears that AZAT is selling units prior to construction. Buyers pay approximate prices, subject to recalculation and additional payment (or reimbursement) when the unit is complete (6 to 9 months for an apartment, 3 months for a cottage).

The field for new enterprises (not previously state-owned) engaged in construction or speculative development is wide open, but few, if any, have been established. Under the Law on Enterprises, an enterprise can be formed to build multiple dwellings for sale or lease. The process for obtaining land is as follows:

- The enterprise can request a building site from the Chief Architect's office.
- The Chief Architect's office reviews the request and investigates the availability of utilities and other infrastructure to service the parcel, identifies a suitable site, and issues a document called an architectural planning task that identifies the parcel and the utilities to be provided.
- Once the site is identified, the enterprise would have to enter an agreement with the local soviet for use and possession of the parcel, which would include the type of tenure, the specific uses of the property, including the use of the property as collateral, whether the units could be sold or leased, and the cost. The soviet would no doubt supervise the enterprise's activity very closely.

The local soviet's authority in this realm is not specified by published rules or standards. No public hearings or public participation of any kind is required in the land allocation process or in land-use decisions.

While many decisions of the local soviets are routinized and undoubtedly have a ministerial quality, an entrepreneurial real estate development project would not be a routine matter. Given the novelty of the concept, the local soviet's reaction to the proposal would be unpredictable.

c. Housing Cooperatives. Housing cooperatives, a holdover from Soviet rule, constitute about 6 percent of the residential space in Bishkek. They are voluntary groups of citizens who pool their financial resources to build an apartment building with the help of state credits. Once completed, they run and maintain the building. Since the adoption of the Housing Privatization Law, owners of cooperative units have been accorded the same rights as owners of privatized apartments. A key distinction between the two groups is that the housing coopera-

tives already maintain their buildings on a cooperative basis, commonly using GhEK for maintenance.

In light of the apparent resistance to entrepreneurial residential real estate construction, it might be worthwhile to explore whether housing construction cooperatives can be revitalized and perhaps modified in certain respects to provide a more efficient mechanism for delivering housing stock than owner-constructed single family dwellings. While more liberal land allocation and tenure systems to benefit real estate entrepreneurs might be resisted strongly, similar modifications of the laws to benefit housing construction cooperatives might be more easily accepted.

d. Current Production Figures. Housing production has declined sharply over the last 4 years. The projected total for 1993 of just over 500,000 square meters is less than half of the 1990 total. Yet a substantial volume of housing of all types continues to be built. Private building, by owner-builders (mainly rural) contributes the largest share, estimated at over 380,000 square meters in 1993, about 45 percent of the private production figure for 1990. By contrast, multistory urban construction in 1993 will be only about 13 percent of the 1990 level. Building by housing cooperatives, which was pushed in 1992 as a substitute for fully subsidized state housing, has fallen back in 1993's severe financial climate to only about one-fifth of the 1990 total. Continued building by enterprises has to some degree offset the collapse of state construction.

Aside from the incremental, owner-builder sector, construction continues to be dominated by the now privatized successors to the Soviet-era kombinats. Kyrgyzkurulash is the privatized successor to the Ministry of Construction. It is a conglomerate, with several subfirms engaged in residential construction. According to a Price Waterhouse report of August 1993, the conglomerate structure may continue to serve organizational and procurement ends, and therefore should be provisionally retained. At the same time, the ability of subfirms to act independently should be encouraged, with an eye toward reconstituting them as fully independent entities.

AZAT is primarily a residential construction firm, which seems to have weathered privatization and recession rather well by expanding its construction operations to other Soviet Republics, and by diversifying into nonconstruction goods and services within the republic. In Bishkek, it has begun to act as a developer of market-rate projects (both multistory and low-rise),

buying, in some cases, rundown low-density housing to assemble building sites. Small contracting firms, with single family homebuilding capability, are reported to be growing in number and capacity and can be expected to try to move into larger commercial projects as the construction climate improves.

In the near term, completion of unfinished residential projects represents an opportunity to boost housing production and demonstrate new approaches in the construction industry. The unfinished multistory inventory in Bishkek alone is over 150,000 square meters, equal to nearly one-third of the entire national housing production for 1993. The State Property Fund's program to sell unfinished buildings, described earlier in the report, has demonstrated that firms are willing and able to invest in such projects, in expectation of market-rate sales. In projects where partially defined occupancy rights have already been distributed, it may be possible to draw future residents into financing the building's completion, while allowing those unable to participate to sell or trade their shares.

8. Protection for Low-Income Families

Kyrgyz officials are well aware that allowing housing maintenance and utility costs to rise to market rates requires the institution of some form of social protection. A system of housing allowances (means-tested housing subsidies to families), to be supported at least in part by international donors, has been under discussion with the World Bank for several months as a component of a broader social safety-net program. Little progress seems to have been made, however, within the Republic's government in designing or implementing such a program.

C. TURKMENISTAN

Alone among the four Central Asian Republics surveyed, Turkmenistan appears to be making little effort as yet to depart from the housing policies and practices of the Soviet era. Even at the rhetorical level, officials interviewed placed little emphasis on the immediate need to privatize housing services or to move away from reliance on public housing construction to meet the shelter needs of the population. In fact the rate of public housing construction has increased somewhat over the past 3 years. Although a housing privatization law was enacted in 1992, its implementation has not been a priority and only a very small percentage of state units have been transferred into private hands.

As we understand the government's cautious approach to privatization of the economy as a whole, it does intend to address privatization of the construction sector (including housing production), but only in a later stage of the overall transition process. Immediate priorities are to upgrade oil and gas facilities to increase exports and foreign currency earnings; to modernize public infrastructure such as ports, electric generation facilities, water systems, and roads; and to modernize the agricultural sector to reduce dependence on food imports. Only then would significant privatization of government enterprises proceed, working up to large enterprises such as the large, housing construction monopoly.

Having implemented some economic reforms—including the introduction of a new currency (the Manat), limited price liberalization, pension fund increases, and new fiscal and monetary policies—the government may, nonetheless, be receptive to some targeted, technical assistance in housing sector reform and the creation of private real estate markets. In particular, legal assistance in respect to clarifying basic land tenure and real property rights could prove timely. As of this writing, attorneys in the Ministry of Justice and representatives in the legislature are debating issues concerning private ownership of land, buildings, enterprises, capital, and other assets. Resolution of these issues is fundamental to the housing reform agenda broadly defined, and as being addressed in other newly independent states with active USAID housing reform programs.

1. Demographic and Housing Data

a. Basic Demographics. Most of the population of Turkmenistan (3.8 million in 1993) live in a group of oases along the Amu Darya and lesser rivers. Some people have recently begun settling along the Karakum Canal. The capital city, Ashgabat (population 400,000), was founded in 1881 and devastated by an earthquake in 1948, from which it is still recovering. The ethnic composition is over 70 percent Turkmen, 9 percent Russian, 9 percent Uzbek, and 9 percent other ethnic groups. Turkmen speak a Turkic language and most are Sunni Moslems. Six clans dominate the population, of which Tekke in central Turkmenistan is the largest. As in other former Soviet Central Asian Republics, many ethnic Slavs are now emigrating from the cities, hoping to find better economic opportunities abroad.

According to a March 1993 Congressional Research Service report, Turkmenistan's 1991 per capita income was 3,402 rubles, among the lowest of the former Soviet Republics. Relatively few investments in technology, infrastructure, and industry were made

under the Soviet regime. Consequently, the Turkmen economy has traditionally depended on cotton farming and oil and gas processing. Agriculture is the most common area of employment.

b. Housing Stock. The housing stock of Turkmenistan consists of roughly 960,000 units. As is the case elsewhere in the region, much of this stock, nearly 70 percent, has historically been in private ownership as single family housing. Approximately 30 percent is state or enterprise-developed housing, largely occupied by renters. Less than 5 percent of the stock was developed by cooperatives.

Approximately 10,000 families are currently on the waiting list for state housing in Ashgabat. The average wait is between 5 and 10 years. The wait can be shortened due to family size or special status (such as war veteran or retiree). In the past, due to the relatively high birthrate in Turkmenistan, little real progress has reportedly been made in reducing unmet housing demand in the capital or in other parts of the country.

2. Privatization of State-Owned Housing

Turkmenistan initially recognized the right to personal property in 1991 when the Law on Denationalization and Privatization was adopted. In response to that law, Ashgabat's mayor initiated a housing privatization program, charging only a small fee based on depreciated construction costs, for tenants to privatize their housing units.

The Ashgabat program was halted in 1992 when Turkmenistan adopted the current national Law on Privatization of Housing. It allows free privatization of apartments by tenants who have occupied their units for at least 15 years. Tenants who have lived in their apartments less than 15 years could privatize their units for a fee, prorated according to their term of occupancy. Privatization recommenced, as did sales of privatized units. But the government, concerned about the high resale prices fetched for privatized units, declared a 10-year moratorium on sales. Consequently, less than 10 percent of the public housing stock has been privatized since independence.

The moratorium on sales of privatized apartments seems to indicate a setback for the movement toward a private real estate market. More accurately, it may reflect a government perception that the privatization program was premature, given the slow pace of economic transformation. For example, the first stage in privatization of state enterprises is only now beginning.

As it begins to reconsider a fresh start in housing privatization, the government is reportedly considering two approaches: selling government housing at low discount rates or simply giving it away.

3. Maintenance and Management of Privatized Housing

Maintenance of communal areas and facilities remains the responsibility of the state. Ashgabat officials indicated that they are interested in reducing expenditures related to both housing construction and maintenance, but feel that as long as the government's land tenure policy remains in effect, Ashgabat has no alternative but to continue to build housing. Although currently about 50 percent of the city's Community Development Budget goes toward maintenance, the city cannot keep up with demand for service, which averages 50 calls per day. City staff are considered underpaid and lacking in necessary construction and electrical materials. Residents waiting for repairs often resort to paying family members, friends, and off-duty city maintenance staff to provide services. A typical family can spend up to 15 percent of its annual income on maintenance of the unit.

Turkmen living in state housing spend about 5 percent of their monthly incomes on rent. Utilities such as electricity, central heating, water, and gas are provided by the state at no cost (some units have no central heating). Monthly rental fees have not changed since independence in 1991, and remain low. To date, there is no apparent movement to increase rentals or fees for housing services toward market levels. It appears that owners of privatized units still receive free utilities and pay "rent" in exchange for whatever maintenance services they receive.

4. Property Registration and Valuation

Basic property valuation systems, which are not market based, have been developed at the republic and local levels. Unit value is based on historic construction costs minus depreciation. Issues such as zoning, improvements, and access to municipal services have no bearing on the value of the unit.

Property is registered at the district level. Each city designates areas for development by district number and manages this information in the Communal Department of the mayor's office. Citizens who build their own residences obtain permits from the Special Housing Commission on Land Allocation, also in the mayor's office. The permit designates a specific plot for residential use and authorizes private development.

5. Land Privatization and Tenure Issues

Turkmenistan's constitution grants citizens property rights, declaring private property sacrosanct and protected against confiscation. In October 1993, Turkmenistan adopted a new Law on Property that identifies the potential owners of property as individuals, municipalities, the state, public associations, joint ventures, cooperatives, and mixed ownership. It defines the sources of property, rights in property, and protection of property, and distinguishes land rights from other property rights.

While the state still owns all land, regulations adopted in February 1993 specify certain acceptable uses of land, such as agriculture, private gardens, and housing. A recent Presidential Decree backs the Constitution's commitment to property rights by granting individuals the right to obtain a plot of land for a private dwelling.

Attorneys at the Ministry of Justice are drafting a more definitive law on land ownership for review by the President's Commission on Housing Privatization Policies and the legislature. Current land use regulations are focused on agricultural and industrial uses. For example, one government land-lease program offers any family 50 hectares of former state-operated farm land free in return for "productive use" of the parcel. Productive use is defined as producing products designated by the government as high priorities for import substitution. These include corn, wheat, sugar, fodder, vegetables, and fruits. Industrial land-use policy initiatives include designating foreign trade zone areas and creating tax abatement incentives for industry.

6. Housing Finance

The Ministry of Economics and Finance is drafting a mortgage law that includes provisions for financing of up to 20 years. Reportedly, the law will initially focus on commercial and industrial lending policies, with provisions for financing residential development to be phased in later.

A national savings and investment bank has been created to provide start-up capital to small farmers. In the future, it may also serve small private businesses, including contractors involved in housing construction or maintenance services. The European Economic Community has provided a \$1 million ECU grant to help start-up the bank. Without mortgage laws in place, however, the bank cannot provide mortgage financing.

The government is aware that it needs a system of supporting legislation and initiatives to create a market-driven housing sector. These include, but are not limited to, a mechanism for housing finance, a land assessment/valuation and pricing system, provisions for housing maintenance, formal protection of low income citizens (either through housing allowances or continuing to provide housing), and incentives for (as well as controls on) investor-built housing. The legislature was considering tax abatement incentives for joint ventures in the housing construction industry, but even if passed the incentives may not amount to much because of insufficient effective demand for cost-recoverable housing in the foreseeable future.

7. New Housing Production

Available data suggest that total housing production has been increasing in recent years. Unlike other Central Asian Republics, in Turkmenistan, the state is continuing to build public housing, with the rate of total construction increasing by 10 percent annually since 1990. In Ashgabat, annual construction of public housing probably amounts to 3,000 to 4,000 units. However, increases in privately built housing appear to be even greater and now represent over 72 percent of new construction. Despite an absolute increase, housing construction by the state, cooperatives, enterprises, and other associations dropped from 47 percent of total output in 1990 to 27 percent in 1992.

In rural areas, new construction by collective farms decreased from 2 percent of the national total in 1985 to 0.3 percent in 1992. Almost all new housing (all apartment block units) continues to be built by state construction enterprises. Small detached and duplex units are being built by cooperatives and small contractors.

A government-sponsored Housing Construction Fund currently provides low-interest credit for single family housing construction on a limited scale. The large state-run construction enterprises continue to dominate the industry. Small contractors continue to build only individual units and have no access to government contacts. "Profit-making" in the construction of state housing is not currently provided for, effectively preventing small builders from scaling up.

One official in Ashgabat described a change in the city's urban land-use policies. In contrast to the high-rise apartments currently under construction in the southeastern quadrant of the city, small areas on the city's master plan have been designated for low-density, single family, detached home development. In

most cases, these homes would be built by small private contractors, either individuals or collectives. Some officials consider these homes a luxury for a city experiencing a severe housing shortage.

There are continuing concerns about the quality of state-built apartments. A family moving into a new unit reportedly spends up to 20 percent of its annual income converting the apartment into livable space. Repairs are made by contracting informally with electricians, carpenters, and plumbers, some of whom work for the city's maintenance division. Materials and supplies are purchased on the informal market.

While construction of public housing continues at a rapid pace, the Turkmen government and the city of Ashgabat realize that issues of quality are not being well-addressed. Some believe the creation of a private or mixed development system would promote higher standards and a more efficient housing construction industry.

8. Protection for Low-Income Families

As noted above, housing consumption is still highly subsidized. The government does not appear to have given attention to rationalizing housing subsidies, for example by phasing in increased rents and redirecting subsidies toward the lower income segments of the population. Turkmenistan's government continues to emphasize general measures to protect the neediest members of society from both the effects of inflation and the short-term impact of economic reforms, and claims to provide more generous social programs than other republics of the former Soviet Union. Public assistance, which is most generous for retirees, the disabled, and single mothers, is paid out through the government Pension Fund. Turkmenistan is considering implementing some sort of fund to assist employees adversely affected during the transition to market economy.

D. KAZAKHSTAN

Kazakhstan has made significant progress in privatizing its multifamily housing stock in the limited sense of having given a large number of households ownership of their apartment units with fairly clear rights to the economic benefits inherent in ownership of a real estate asset (to sell, lease, bequeath, etc.). Relatively little progress has been made in actually transferring responsibility for management and maintenance to the owner of privatized units or in moving toward market pricing of housing services.

The recent Presidential Decree promulgating a "New Housing Policy" represents an ambitious attempt by the government to articulate a comprehensive housing policy intended to provide the framework for the transition to a private housing market--albeit in a very cautious manner and in a form that still contains many unresolved inconsistencies and ambiguities with respect to intentions. Moreover, in the new Housing Ministry established by this Decree, the government has created, for the first time, an agency empowered to develop and implement programs aimed at the housing sector as a whole (the utilization of the existing housing stock, housing production industry, and the system for allocating land and financing to the housing sector). A major focus of the new policy appears to be to use the government's investment in housing to foster competition and the emergence of "commercial" developers capable of organizing housing production in a market system. The push to boost housing production and the role of private firms is tempered by a fear of abuses and poor quality construction if such activity is not carefully regulated.

Prior to issuance of the Decree, substantial progress had already been made in selected areas of legislation relevant to establishing the legal basis for private markets to operate. However, despite some embryonic activity (the beginnings of an active resale market in the larger cities, some brokerage activity--mostly on the grey market, a small handful of truly private maintenance and homebuilding firms), little evidence of organized, statistically significant private housing market activity exists at this time.

1. Demographics and Housing Data

a. Basic Demographics. Kazakhstan's 1992 population was estimated at just over 17 million. The population is about 57 percent urban and 43 percent rural. Almaty, the capital city, had a 1992 population of 1,198,000, a 3.3 percent increase since 1990. Population increases are attributed to net increases of births and immigration over deaths and emigration. As emigration increases, population growth is expected to slow.

b. Housing Stock. Kazakhstan's 17 million people reside in 4.3 million homes. The average household is approximately 3.5 persons in urban areas and 4.5 in rural areas. Housing size varies from 16.7 square meters per capita in Almaty, to just under 13 square meters per capita in the countryside. Since 1991, 70,000 new housing units have been added to the housing stock, a substantial slowdown in new production from the average annual rate of over 100,000 new units from 1985 to 1990.

In 1991, when privatization was initiated, an estimated 64 percent of all housing in Kazakhstan was state-supported (built and operated by either local soviets, state enterprises, state ministries, or state-supported cooperatives) and 36 percent was privately owned. The pattern of ownership in Almaty at that time, considered typical of urban areas, showed less private ownership (29 percent). The remaining housing in Almaty was state-supported as follows: state housing, 52 percent; state enterprise housing, 12 percent; cooperative housing, 5 percent; state ministry housing and other, 2 percent.

c. Housing Need. The waiting list for housing in Almaty contains about 57,000 names consisting of about 40,000 families (about 12 percent of the approximately 330,000 families in the city); 10,000 individuals now living in hostels or other dormitory-like facilities; and 7,000 low-income families who now rent but who are eligible for (and desire) free state housing. The average time spent on the waiting list averages about 10 years. This situation is reportedly more or less typical of urban areas. In rural areas, unmet housing need is considered less acute. It is likely that these waiting lists primarily reflect generational doubling up in units, which pushes the space occupied per person above the fairly minimal government norms.

As in the other republics, it is not possible to translate waiting list statistics into a reliable estimate of the actual housing shortage. For example, no information appears to be available on how many persons may be "over-consuming" housing—i.e., occupying larger apartments or houses than they need and which they might voluntarily free-up for a larger family (by moving to a less expensive unit) if housing prices moved toward market levels.

Moreover, emigration has quadrupled in the 2 years since independence. The outflow of Russian nationals may relieve the need for new housing production. On the other hand, returning military personnel will have to be accommodated. The government representatives interviewed declined to speculate on the end result of these two countervailing forces.

Under current economic conditions, housing shortages, no matter how acute, cannot convert into effective housing demand in the marketplace. With incomes only a small fraction of new housing costs and no long-term mortgage financing available, virtually no one can contemplate paying the real cost of constructing a new home (even with free land available). For example, in Almaty, officials estimate that fewer than 200 new single family houses are being built annually and a portion of these are for the foreign community. The active housing resale market provides

evidence of some "mattress money" available for families to trade up to better housing. As an example, a typical two-room apartment in Almaty sells for \$8,000-\$10,000, a ratio of 10 to one to average yearly income. This compares with a ratio of only two or three to one in the U.S. for average home sales. But for the vast working population of Kazakhstan, a new or substantially refurbished home currently is well beyond their means and will remain so for some time.

2. Privatization of State-Owned Housing

a. Legal Basis. Notwithstanding the principle of national ownership of land, citizens are allowed to possess land for a home which can be sold or inherited. Article 23 of the Constitution grants citizens of Kazakhstan the right to housing. In addition, it provides that, "The state assists in exercising the right to housing by granting for use and sale dwellings from the state housing body, and by encouraging housing construction." This would indicate that the state's obligation to provide housing involves only a one-time transfer of available dwelling units and that it will encourage housing construction in the future. These principles are reflected in the laws relating to privatization of housing, specifically, and to land and housing, generally.

Carrying out its constitutional pledge to assist citizens by granting dwellings from the state housing stock for use and sale, Kazakhstan enacted the Law Concerning Denationalization and Privatization in June 1991. The Cabinet of Ministers of Kazakhstan adopted a resolution concerning privatization of state housing stock in January 1992. It has been amended at least three times and is alluded to in the Housing Code of the Republic. The resolution authorizes that all habitable units in the state housing stock can be privatized.

Privatization is voluntary. Tenants of apartments or dwelling houses who are citizens of Kazakhstan are entitled to privatize their units, provided they obtain the written consent of all adults occupying the dwelling unit in question. The apartment becomes the joint property of all family members in tenancy at the time of privatization.

The Housing Law of 1992 amplifies and modifies the rights to privatize housing set forth in the Denationalization and Privatization Law. It also provides for joint ownership of a residential building that is privatized by its tenants, codifying the basic concept of communal responsibility for communal features of a residential building. Unit owners are authorized to form an

association for the purposes of maintenance and service of the jointly held areas. When such organizations are formed, they have the right to reimbursement from the owners and what is owed may be levied in a compulsory manner. In addition it provides that a person who continues to use a unit of state housing is granted the right to acquire other housing for ownership. Although there are some anecdotal reports of a few such associations being formed, there is no organized process for establishing owner associations once the majority of the units in a given building have been privatized.

b. Pricing and Revenue. In addition to authorizing a high percentage of free transfers to such groups as veterans, educators, and health care workers, the resolution and the housing law authorize payment by a voucher issued to every citizen, the amount of which depends upon the citizen's years at work. The voucher can be used to buy an apartment or an enterprise. The amount of the voucher may be less than, equal to, or more than the cost of an apartment.

The state is also, of course, willing to take cash or to "finance" the purchase, allowing a tenant to pay for the unit over 10 to 15 years, depending on the circumstances. The resolution generally describes the cost of the unit as its depreciated "balance value," without fixing the actual price. That task is delegated to local soviets or their agencies.

Once a housing unit has been privatized, the rent formerly paid to the local soviet or other state entity is discontinued but a maintenance fee continues to be charged. A property tax on privatized housing was instituted but at extremely low rates. Due to the number of discounts and exemptions, less than half of all property owners now pay the tax.

Critics of the housing privatization plan complain that it creates inequalities. The elderly receive more credits and, having had more time to save, can apply a larger coupon to the purchase price of their apartments and have funds left over to purchase an interest in an enterprise. Young people receive few or no credits and have little money saved so they cannot afford to buy their units. Various amendments to the resolution seem to have done little to ameliorate the perception of inequality. The cumbersome system for valuing apartments also is criticized.

Responding to these criticisms, Almaty's mayor issued a decree making privatization free for all residents of Almaty who are citizens of Kazakhstan and who have lived in the city for 5 years. This applies to state and enterprise housing. As a

result of this and the continuing rapid inflation, the city has reduced almost any immediate financial disincentive to privatize.

In the nascent but active real estate market in Almaty, listed prices are typically about \$15,000 for a two-bedroom unit, \$19,000 for a three-bedroom unit, with prices varying considerably according to location and condition of the unit. (Average prices may be lower since less desirable units may not be advertised.) Informal real estate brokers are arranging sales and financing where needed. One government official reported that, initially, asking prices were substantially higher than those quoted above, but as reality set in (no buyers) prices began to fall. Many sellers were said to be families emigrating to Russia.

c. Institutional Framework. The Kazakhstan denationalization law bifurcated responsibility for privatizing state-owned property. The Committee (Ministry) on State Property was given the responsibility for the privatization of state enterprises and republicwide services while local governments were given responsibility for privatization of communal (local) property. Housing is characterized as communal and, therefore, is being privatized by the local governments.

Privatization of housing occurs mechanically. The prospective owner must file an application with the neighborhood authority. The application is reviewed and, when approved, the prospective owner must sign a transfer agreement between the local department of housing and the owner, which must then be notarized. The transfer document is the legal evidence of ownership. In cities, the transfer document must be filed with the Bureau of Technical Inventory (BTI), a centralized urban filing system. In rural areas, it must be filed with the local soviet. Theoretically, a private citizen could have access to BTI's files to verify that a person selling the unit is the actual owner, but BTI's files apparently have not been legally established as public records.

d. Rights of Ownership. The rights transferred to a tenant upon privatization are broad. The owner may occupy the unit for residential purposes, offer it to others for use, give it away, lease it, bequeath it, or sell it at once. According to the 1992 resolution, a privatized unit may be used only for residential purposes, although the housing law states that a person can use a privatized unit for a family business as well as a residence. Both laws prohibit use of a privatized unit exclusively for business purposes.

Upon resale of a privatized unit, the buyer reports a sales price, usually much lower than the actual sales price. On this reported price the buyer pays a 1.5 percent tax. Because such cash proceeds are not commonly put in bank accounts, personal security is one reason for under-reporting, in addition to the desire to reduce one's tax bill.

e. Progress to Date. Efforts to privatize state housing appear to have met with considerable success—at least, in the sense of transferring some marketable form of title from the government to owner-occupants. (As discussed below, little progress has been made in transferring responsibility for maintenance and management to the new owners or in clarifying property interests in common areas.) In Almaty, for instance, fully 222,000 (71 percent) of the 312,000 housing units are considered to be in private ownership, including 130,000 units privatized since 1991. In other urban areas and in the countryside, the rate of privatization has been less dramatic. Overall, the government estimates that 60 percent of all housing in Kazakhstan is now in private hands.

It should be noted that these figures may be somewhat overstated. According to the Almaty Department of Housing, housing still controlled by enterprises that the government considers private (e.g., joint stock companies) is considered "privatized." However, the National Housing Ministry suspects that the ownership of the majority of such units has in fact been transferred to the occupants; evidently no hard data on the extent of such transfers is available.

An active market in resales of homes and privatized apartments has begun to materialize in Almaty (many resulting from advertisements in the weekly *Real Estate Gazette*, which carries as many as 500 entries in some editions). However, real estate brokerage is still regarded with some suspicion, and remains a quasi-legal, unregulated profession.

3. Maintenance and Management of State-Owned Housing

a. Obligations of Ownership. Under the law, owners are required to maintain their units and contribute to the maintenance of common areas. In practice, however, virtually all private owners continue to pay the city for maintenance services and, in effect, are treated the same as the tenants of un-privatized, state-owned units.

The housing law appears to convey to apartment owners joint ownership of common areas, albeit in imperfect form. While the

state housing maintenance, repair, and construction organizations that performed the work prior to privatization still operate, the laws expressly authorize owners to form associations or owners' cooperatives for maintenance. Owners of apartments in completely privatized buildings have the right to independently choose an organization to service their buildings. They may pick from state groups, cooperatives, private firms, and other business entities. Utility costs, heavily subsidized by the state, continue to be the responsibility of the owner.

The legal framework for such associations of apartment-unit owners, and for private apartment building maintenance companies, presumably exists under the Kazakhstani version of the Law on Enterprises adopted in other former Soviet Republics. ICMA is currently assisting the government in preparing a condominium law, which would clearly spell out owner rights and responsibilities in commonly owned buildings, and provide basic consumer protections. Assistance is also being given in providing model charters and bylaws for condominium, and homeowners' associations and model contract documents for contracting out property maintenance and management.

b. Operating Costs. Before independence, the "rent" for state housing was merely a token amount, less than \$1 a month in Almaty. Repairs to individual units were provided for a nominal fee, but service was reportedly often poor. A heavily subsidized (66 percent) monthly fee covered maintenance and repairs for communal spaces. In theory, while the city provided maintenance for all state housing, government maintenance programs have always lacked the financial resources to pay qualified and competent staff. In fact, residents more often than not paid additional fees directly to individual workmen for capable and timely maintenance.

The communal services fee continues to be charged and rates do not vary even if the building is privately owned or if a private service agreement has been signed. Utility costs, also heavily subsidized by the state, continue to be the responsibility of the occupant.

While responsibility for apartment maintenance has reverted officially to the owner and property taxes have been imposed, the reality of what it costs to maintain a privatized apartment that was formerly state housing has changed little. Housing maintenance was a relatively small expense before privatization and still is; food, clothing, and transportation costs are the major household expenses, with perhaps as little as 5 percent of the budget going toward housing occupancy costs.

The government continues to consider ways to relieve the financial burden of communal maintenance costs and utility subsidies, but to date little progress has been made. The government has said it would like to stop providing communal maintenance in 1995. The new property tax has brought in little revenue. Utility rates have been allowed to rise somewhat but are still far below market rate.

One positive result of poor government maintenance service is that tenants have developed their own informal networks and small businesses are beginning to find new opportunities. Thus the seeds have been indirectly sown for the creation of an active market for private maintenance services. These small businesses appear particularly skillful at obtaining needed spare parts and other maintenance supplies, such as light bulbs, paint, electrical wiring, and cement. Service delivery time is also improved.

4. Property Registration and Valuation

A publicly accessible, accurate, centralized and complete system for recording interests in real property and buildings is an essential ingredient of a smoothly functioning housing and real estate market. Earlier this year, an ICMA consultant studied the title registration and land cadastre in Kazakhstan and concluded that much of the institutional capability and data needed to create workable fiscal and legal cadastre and a titling process for housing are, in principle, already in place. However, much of this capability is fragmented among different bureaucratic entities.

The BTI, formerly a national structure but recently decentralized into independent municipal agencies, is responsible for "record-keeping of physical characteristics and value of all residential and public buildings and apartments, and for the inventory and valuation of any other housing estates (including enterprises)." BTI also keeps records of current and historical ownership for all residential property. The ownership information supplied by the Department of Housing, which handles the privatization program, is computerized by BTI; the physical descriptions and, consequently, the valuation of property is not yet computerized or matched to ownership.

The registration system appears to have functioned fairly efficiently in respect to recording the initial privatization of units. However, by some anecdotal reports, city officials responsible for registering transfers by sale from one private owner to another will question the transaction—for example, does the purchaser really "need" an apartment with three bedrooms.

Complicating the property information picture is the fact that land lease recording and mapping, land-use regulation, and land allocation transactions are handled by the local architect-planning departments (GlavAPU). GlavAPU keeps parcel records and registers land allocation, including information on parcel identity, when and to whom the land was allocated, and the administrative decision registry number. (Much of this material, other than maps, has been at least partially stored in computerized form.)

Complicating matters further, property taxes are assessed and collected by a federal agency, the State Tax Inspectorate of Kazakhstan, part of the National Ministry of Finance, whose files are not yet computerized.

The ICMA study recommended further development of the legal framework for market-oriented legal and fiscal cadastre; consolidation of functions particularly in respect to the titling of land, apartments, and other categories of real property; and linkages between the information systems maintained for titling, valuation, and property tax assessment purposes.

5. Land Privatization and Tenure Issues

a. Legal Basis. Kazakhstan's constitution, its laws relating to privatization of state-owned enterprises, privatization of housing, formation of enterprises, and ownership of property mark the shift from communism to a more open political and economic system. They are a good foundation for further change and growth. Nevertheless, Kazakhstan's laws and procedures relating to land tenure and land use do not reflect a similarly progressive attitude toward speculative real estate development.

The Constitution of Kazakhstan, adopted in summer 1993, expresses the country's fundamental values regarding land, private property, and housing. In essence, the republic owns the land. The Constitution states: "The land, its depths, waters, vegetable and animal worlds and all other natural resources are within the exclusive ownership of the Republic." This principle of national land ownership derives as much from the Kazakhstani deep-seated connection to the land as it does from Soviet influence.

The Constitution authorizes and recognizes the right to private property in three forms: private, collective, and state property. It declares all private property as "inviolable." An owner may possess, use, and transfer his property at his own discretion, subject to the rights of others and the protection of the envi-

ronment. No one can be deprived of property except by court decision. Confiscation "in the public interest" must include appropriate compensation and reimbursement of losses. (In practice, this is limited to providing an alternative living unit, with considerations of function, convenience, and value far secondary.)

The Constitution mandates that all land belongs to the state. The Land Code, enacted before the Constitution and neither repealed, superseded, nor modified by the Constitution in any relevant respect, authorizes certain land tenures short of ownership. The five modes of authorized tenure are: hereditary life tenure, permanent use, temporary use, leasehold, and indefinite occupancy.

As described in the Land Code, these forms of tenure mostly relate to rural uses, such as vegetable gardening, agriculture, and cattle grazing. None of them expressly relates to such urban uses as offices, stores, multifamily dwellings, or factories. In all instances, however, one's interest in the land is tied to a designated use. Failure to use the land in accordance to the stated purpose can be a basis for losing access to it. Thus, there is no privatization of land, per se.

Hereditary life tenure is the form closest to fee ownership, at least for non-corporate bodies. Indeed, this form of tenure is sometimes translated as "ownership." Hereditary life tenure affords the right to occupy land and use it for life, construct a building on it, farm it and sell the crops, and pass it on to heirs. The Law on Ownership also seems to allow hereditary life tenure to be transferred to a third party by lease or sale.

When hereditary life tenure is transferred to an heir, which seems to be defined in the Housing Code as anyone chosen by the landholder, ownership as we know it in the structure constructed on the property or in the vegetation grown on the land, along with the right to occupy the property for life, is also transferred. Presumably, if one dies without heirs, the property will revert to the state. At least 5 years of residency in the Republic is a prerequisite for obtaining hereditary life tenure.

The Land Code stipulates two other long-term forms of tenure with the following provisions:

- "Permanent ownership"--available to collective farms, cooperatives, public enterprises, certain institutions, and religious associations. The Land Code does not expand on the meaning of permanent ownership. Since the adoption of

the Law on Property, it would seem that this type of tenure could be transferred, in which case permanent ownership would resemble a long-term lease with a right of assignment.

- "Permanent use"—available to citizens, juridical persons, joint ventures, and foreign citizens. Where land has been used with no formal agreement regarding the term, the Land Code recognizes the tenancy as a permanent use. The permitted uses are the same as for hereditary life tenure.

The Land Code also outlines three forms of temporary tenure, analogous to our short-term leaseholds:

- "Short-term temporary use," defined as 3 years;
- "Long-term temporary use," defined as 10 years; and
- "Long-term agricultural or livestock temporary use," defined as 25 years.

The terms of any temporary-use period may be extended at the discretion of the local governmental authority. In temporary-use situations, terms are automatically renewable for the same term and under the same conditions unless otherwise stated in the lease.

The code's authorization of hereditary life tenure and permanent use can be used as a starting point for private home development and entrepreneurial residential real estate construction. Nevertheless, as a foundation for residential development, the code is significantly flawed. Its lack of definition of each of the forms of tenure creates a potentially untenable legal situation for investors. Kazakhstan attempted to remedy this situation with the adoption of a Law on Leasing, but, unfortunately, that law was repealed in 1993. Its liberal land transfer policies were viewed as a danger to the country's hold on a valuable resource.

The Land Code is flawed in other respects. Its focus on rural land uses makes applications to urban or suburban development awkward. Its restrictions on use preclude construction of multiple dwellings and construction on a speculative basis. Its requirement that all plots be obtained through a discretionary process inhibits entrepreneurial activity. The inability to convey unimproved land also would limit certain forms of development (for example, subdivision infrastructure development without individual home construction may be precluded). Finally, its subordination to other laws that grant the government the power of confiscation makes its use for entrepreneurial activity risky. While individuals may be able to manipulate the system for

entrepreneurial purposes, the laws are not set up to facilitate it.

The power of the state to allocate land is exercised through the governmental authorities (soviets) with respect to property within their jurisdiction. To facilitate the local soviets' use of these new forms of tenure, the Cabinet of Ministers adopted regulations and a form of contract to be entered into by the soviet and the lessee. The regulations specify responsibility for negotiating the contract, the formal requirements for the contract (size and color of paper, type of cover, number of copies), and place and method of registration. The contract form includes a description of the property (by reference to a land plan), the use permitted, the term, the fee, the rights and duties of the temporary land user or tenant (including environmentally safe techniques), the rights and duties of the local authority, and the mechanism for resolving disputes.

b. Current Practice. Using the institutional framework provided by privatization, an entrepreneur can petition the State Property Committee (for property in Almaty) or the local soviet for permission to use a plot of land in the respective agency's jurisdiction. Each such transaction is negotiated; there are no standardized procedures or fees.

Within that context, decisions regarding land allocation for construction are based on the mandates of the local master plan, which is developed by a local planning institute on contract to the Chief Architect and approved by the executive committee of the City Council.

According to the Deputy Chief Architect of Almaty, the process of land allocation in Kazakhstan is largely unchanged from the pre-privatization system. Various city agencies are represented on a site selection committee, which reviews the project to determine if the requested site is appropriate for the use proposed. If more than one acceptable project has petitioned for the same site, the political process would rule, which is to say that ultimately the mayor and his executive committee would decide. The criteria for decision making are neither fixed nor public, but clearly certain factors outweigh others. For example, to induce foreign investment, joint venture projects would appear to have priority.

The Deputy Chief Architect of Almaty claimed that the approval process takes, on average, 1 month, regardless of the type of venture—state construction enterprise, joint venture, or individual entrepreneur—provided the developer has the required papers

in order. More time is needed when problems surface, such as variances with land planning or building code regulations, multiple requests for the same parcel of land (not unusual, especially for prime land in the downtown area), or failure to negotiate "fees" in a timely fashion.

The city is preparing to institute an exact land price in lieu of negotiated fees, expected to start at 25 million rubles per hectare (about \$3,800 per acre) and go up to 100 million rubles per hectare for prime downtown land (\$15,000 per acre). The new pricing system is expected to reduce disputes by potential developers who apply for what is now free land.

Typical current land leases in Almaty are for a maximum of 99 years with an option to renew, a right of inheritance, and a right of transfer, according to the Deputy Chief Architect. He claims that land tenure is separate from land use in that if the use changes, land tenure is not automatically lost. He added, however, that the city must be notified of potential changes in land use. Failure to do so could jeopardize tenure.

c. Land-Use Planning. Newly reconstituted as a joint stock company wholly owned by the city, the Almaty GenPlan is responsible for developing the city's Master Plan. Its director noted that although Kazakhstani law governs the development and modification of planning activity, in fact, the standards are essentially unchanged from Soviet law. Changes both to the process and the standards employed are being discussed at the national level as part of the Housing Ministry's implementation of the President's New Housing Policy. For now, planners are still concerned with micro-regions, and with land planning theory that calls for precise regulation of the size, shape, orientation, use, and servicing of each individual structure in accordance with precepts of housing patterns unchanged since the 1960s.

During the current slowdown in housing production, Almaty GenPlan has kept busy trying to plan for new prototypes and has worked with certain private (joint stock or joint venture) enterprises to study future development patterns. The agency has not yet begun to seriously consider moving to American-style zoning, however, or other more general types of regulatory control, even though the director is aware that these systems are more flexible tools for land-use regulation and thus more appropriate for a system moving toward reliance on private land development to meet its needs for housing and industrial/commercial space.

At the national level, the new Housing Ministry views the re-orientation of the land-use planning process toward a market system and the creation of an appropriate land use regulatory system as part of its mandate. This task has recently begun to receive attention at the top of the Ministry.

6. Housing Finance

To date, multifamily construction, with the exception of a small amount of cooperative housing, has been financed and constructed by the government and state enterprises. Cooperative housing relied on heavily subsidized, government loans (up to 30 years with interest rates of less than 5 percent) to cooperative members.

Financing for private home construction or purchase has been conducted largely outside the formal financial sector, utilizing personal savings and loans from relatives and friends. Most transactions are conducted in dollars rather than the local currency.

The only formal, financial sector housing credit is provided through the Kazakhstan Savings Bank (KSB), with over 3,000 branches throughout the country. A 1987 decree authorized the bank to make housing loans to individuals for 30 years at a fixed rate of 2 percent in rural areas and 3 percent in urban centers. These programs were restructured by a 1991 decree to provide interest-free, 30-year loans for single family home construction. As of October 31, 1993, the KSB had over \$28 million tenge (approximately \$US 4 to 5 million) in housing loans outstanding, mostly for single family construction and renovation. On average, ceilings on the loan amount have limited the loan amount to about 10 percent of cost--far too little to induce much housing construction that would not otherwise occur.

The government is supposed to pay KSB an interest subsidy to make up the difference between the rate paid by borrowers and a Finance Ministry determined "market rate." This "market rate" has been far too low (about 28 percent) to make this form of lending a viable business for KSB; moreover, the government failed to make its third-quarter 1993 payment.

The Presidential Decree on a new housing policy for Kazakhstan mandates establishing a new, specialized housing finance institution, the State Housing Construction Bank (SHCB) to perform three functions: housing construction lending, long-term mortgage lending, and establishing a funds mobilization system for housing. The Presidential Decree directs the SHCB to enter into an

agency agreement with the KSB to provide mortgage loan origination and servicing on its behalf.

The underlying purpose of the decree's housing finance provisions seems to be to divert government credits for housing into new programs that would encourage the production of housing on a competitive basis, the emergence of "commercial" developers of residential properties as an established profession, and the development of banking skills and capabilities to provide housing finance on a secured, businesslike basis. The decree's expectation is that the Bank's operations would be privatized over the near term. Although the basic concepts hold some promise of contributing to the overall housing reform process, the SHCB could result in perpetuating old problems if its implementation does not clearly separate out functions related to delivering housing subsidies from the performance of banking functions.

Since the time the fieldwork for this study was completed, ICMA has learned of alternative proposals that would establish the new Housing Bank within an existing commercial bank (Turan Bank). The housing finance system, the status of the SHCB's implementation, and the it poses for technical assistance are detailed more fully in a forthcoming report prepared by Elaine Weiss, who visited Almaty in December as an ICMA consultant.

The government has made some movement toward providing a legal framework for mortgage finance (lending that is secured by pledges of real property interests). Kazakhstan has already adopted a Law on Pledge primarily intended to govern pledges of moveable objects. Although this law serves as a point of departure for construction and long-term lending collateralized with real property, it requires substantial revision and amplification (or a new and separate law) to function as an adequate legal basis for a market-oriented, housing mortgage finance system. An ICMA advisor has helped the government draft a proposed Law on Mortgages, which counterparts hope to enact in the first half of 1995.

7. New Housing Production

a. New Residential Construction. Privatization of existing housing is a logical first step toward establishing a fully functioning housing market, but it must be followed by attention to creating an effective capability in the private sector to produce housing that is affordable by a significant portion of the population. This requires a legal and institutional environment conducive to individual home construction and competitive, entrepreneurial construction of

single and multifamily dwellings. Characteristics of such a market environment include private ownership of land and other forms of land tenure that are secure, lengthy, and alienable; the right to use real property for entrepreneurial purposes; permission for private enterprises to construct single and multifamily dwellings on a non-speculative or speculative basis; financing arrangements that encourage investments in real estate development; and transparent, fair governmental procedures that regulate development.

Today, only some of these characteristics exist in Kazakhstan. In large part, a workable legal framework is in place to support the development of individual (non-speculative) housing—either on a custom basis by small homebuilders or by the prospective owner-occupant himself. In respect to entrepreneurial housing construction (single or multifamily dwellings) on a speculative basis, a legal framework of sorts can probably be patched together for use on an ad hoc basis. The current laws and procedures, however, appear to contain significant omissions, inconsistencies, and ambiguities; a thoroughgoing review and modification are needed to create an adequate legal environment for entrepreneurial housing development and a smoothly functioning real estate market.

As mentioned above, the President's Decree on a New Housing Policy ("Decree") envisages using construction and mortgage loans available through the proposed Housing Bank to encourage the growth of private firms (including "privatized" state construction enterprises capable of performing the functions of a commercial developer in a private housing market). It also introduces the principle and objective that everyone should pay for their housing. The Decree also empowers the new Housing Ministry to set the rules for licensing and regulating various classes of real estate professionals, and to put in place a more market-oriented system of building code regulation and enforcement.

At the same time, the Decree contains some contradictory elements that would perpetuate housing subsidies and preferences for various classes of citizens and that could be interpreted as favoring "state" developers. Whether implementation of the decree in practice will be designed and carried out in a manner that begins to shift production from government to private entities remains to be seen.

b. Individual Housing Construction. Within the legal framework, an individual or a family can obtain a grant of tenure (in one among several different, available forms) to a plot on which to build a home. When read in conjunction with the Law on Property, this tenure could provide a homebuilder with an interest in the land and building in many respects tantamount to our fee simple ownership in the Western sense.

A recently proposed law that underscores Kazakhstan's intent to foster single family construction mandates that every citizen has the right to a lot with adequate infrastructure for a home; size is not specified and would be determined by the local soviet. The law assumes that owners will either build their own homes or contract to have them built on individual lots for their own use. Provided minimum health and building construction standards are met, the law allows for freedom of design.

Individuals would be granted hereditary life tenure to such land, but, inexplicably, not until after the house is constructed. Homeowners would be accorded property rights, including the right to sell or lease the house and, it seems, protection against government confiscation of the property.

On the outskirts of Almaty and Karaganda, one can find examples of fairly sizable developments of single family homes, in most cases built or being built by the owners. Although many of these houses are fairly substantial, the overall quality of site planning and development appears uncoordinated and is well below Western subdivision standards. In many respects, these deficiencies (e.g., haphazard grading) appear more attributable to lack of experience with and exposure to high-quality site development than to economic constraints.

c. Entrepreneurial Residential Construction. The government in Kazakhstan does not intend to withdraw completely from the housing construction business. Rather, it intends to continue development and implementation of state housing construction within the framework of a liberalized economic environment that allows for private real estate construction. To a degree, the Land Code, Leasing Law on Enterprises, and the Law on Property can probably be interpreted to provide an ad hoc (albeit, highly imperfect) legal framework for new entrepreneurial (speculative) residential construction.

Privatization of state-owned construction enterprises has begun in Kazakhstan in the sense that many such enterprises have been converted to "joint-stock companies," at least on paper. Despite the demonstrated entrepreneurial ability in some instances to

find new sources of business, it is likely that virtually all of these companies remain dependent to some degree on privileged access to state construction work for their survival, and in some instances may still receive direct government help in meeting their payrolls. One continuing barrier to the start-up of new firms is the punitive tax structure—37 percent wage tax paid by the employer, income taxes paid by the worker, profits taxes, etc.

In all major cities there are reportedly a number of small, private start-up firms engaged in residential construction and renovation, mostly on a custom, "build-to-suit" basis, and primarily on land already controlled by the purchaser. In fewer instances, the builder develops build-to-suit homes on land which he/she initially controls, and in fewer instances still may have built a few units on a purely speculative basis. None of this activity is statistically significant.

A draft law on city architecture may offer the opportunity to move the legal basis for routine land use and allocation in urban centers toward a system conducive to private markets. It outlines the responsibilities and rights of the various participants in the development process, such as architects, builders, consumers, citizens (to participate in the planning process), and the State Committee on Architecture and Construction. The evolution of the draft will be interesting to follow and may offer some opportunity for significant Western technical assistance.

d. Current Production. As typified by Almaty, new housing production in Kazakhstan has come to a virtual standstill, despite significant, unmet needs. In Almaty, 1993 housing construction may total as few as 500 units, down from 5,000 to 10,000 per year prior to the breakup of the Soviet Union. Annual housing production in Kazakhstan as a whole peaked at over 130,000 units in 1988; by 1992 the total had fallen to under 30,000. Public financing of construction has dwindled due to the financial crisis squeezing the national government, which funded the huge, housing expansion program of the 1980s. Restoration of new housing construction on a scale approaching 1982 levels based on private financing remains a distant prospect due to the low earning power of the Kazakhstani workforce and persistent, triple-digit inflation.

e. New Emphasis on Low-Density, Residential Development. National housing policy advocates a shift to lower-density residential development away from the high-rise projects that characterized the Soviet era. This policy appears to be

motivated by cultural preferences, confidence that land scarcity is not a problem in Kazakhstan, and the hope that emphasizing low-density (single family, townhouse) development, possibly incorporating "technological innovations" from the West, can help to lower construction costs and make housing more affordable. (It is easier for small, genuinely private development and construction firms to undertake low-rise rather than high-rise residential projects.) This does not appear to have been an important factor in government thinking. However, in terms of a recommended agenda for housing reform, this lower "cost-of-entry" does argue for at least making sure that reasonable access to land for low-density development is available to homebuilders on a nondiscriminatory basis. There does not appear to have been much analysis of the trade-offs in efficiency and environmental impact factors as the cities move away from higher density residential forms.

At the Almaty city level, the chief engineer for Almaty Project Design Institute, which has designed much of the capital city, confirms that the city's plans for future residential development incorporate extensive low-density, subdivision style development. Detailed plans exist for a series of micro-regions (neighborhoods) outside the built-up area of Almaty with a target population of about 100,000 each. The planned residential density for these micro-regions is between 10 to 15 units per hectare (5 to 7 units per acre). This is comparable to mid-density American suburban models and far less than typical densities in major urban areas, which can reach 20 to 50 units per acre.

As was noted earlier, some small-scale speculative housing projects (built by investors to be sold after construction on the open market) have been built in Almaty in the last 2 years. Since no research, such as American-style market research, was conducted in planning the projects, the results reflect little innovation in design or movement toward more differentiated housing products. For the most part, standard designs have been recycled.

8. Protection for Low-Income Families

The President's "New Housing Policy," as embodied in the recent Presidential Decree, conditions further housing rent increases on establishment of a national housing allowance program to protect the poorest portion of the population who cannot not afford to pay the full cost of necessary housing services. This policy declaration appears to have originated in large part through participation of senior housing officials in USAID-sponsored training events. The housing allowance policy is to be developed

jointly by the Housing Ministry, the Ministry of Social Protection, and the Ministry of Finance.

Officials in the Almaty Department of Housing indicate that though the stated national goal is to privatize all housing by the end of 1994, perhaps as much as 15 percent of the housing units in the city will have to remain as state provided, state maintained housing. This stock would be targeted for lower income families who would continue to receive housing at a highly subsidized rate.

There still remains a need for the government to analyze the flow of subsidies into the housing sector, and to adopt policies that rationalize subsidies in a way that reinforces private markets and consistently targets subsidies to the neediest.

V. A TECHNICAL ASSISTANCE PROGRAM FOR THE CENTRAL ASIAN REPUBLICS

This concluding section of the report:

- first, sets forth a comprehensive framework for assessing technical assistance priorities;
- then recommends initial technical assistance priorities should AID choose to extend the Housing Sector Reform program from Kazakhstan to one or more of the Central Asian Republics.

A. ELEMENTS OF A COMPREHENSIVE PROGRAM OF HOUSING SECTOR REFORM

Based on AID/G/DG/H experience in Eastern Europe and republics of the former Soviet Union, a comprehensive program to transform the housing sector of a command economy to one that fully embodies private market principles necessitates a wide range of initiatives. These can usefully be grouped within three broadly defined agendas, as follows:

- 1. The Transition to Private Markets for the Allocation and Maintenance of Existing Housing**
 - a. The gradual increase of rents and charges for maintenance and communal services toward market levels.
 - b. Housing allowances to help make the increase to market prices for housing services politically acceptable, to provide a "safety net" for those who cannot afford to pay the full cost of housing services, and to generally rationalize housing subsidies in a form that utilizes the market to allocate housing more efficiently.
 - c. The privatization of housing maintenance services and improvement in maintenance quality.
 - d. The continued privatization of housing and formation of homeowner associations (such as condominiums) to provide a legal basis for the ownership of common areas, and to give

legal and financial responsibility for building management to the owners of private apartments.

- e. Clarification of property rights and improved systems for property registration.
- f. The development of the information systems necessary for the operation of private markets, including:
 - market-oriented legal cadastral (property titling) and fiscal cadastral systems;
 - other organized sources of information on market transactions (such as multiple-listing services); and
 - regulated real estate brokerage and appraisal professions needed to provide information to the marketplace.

2. The Transition to a System of Land Allocation and Housing Production That Provides New Housing at Affordable Prices Through the Private Market

- a. The privatization of state construction enterprises.
- b. Introduction of competitive bidding for government construction projects.
- c. Steps to end the preferential access to building materials.
- d. Urban land reform to clarify and expand land tenure rights and make building sites readily available through auctions and other competitive processes to private individuals, small home builders, and firms ready to invest in new housing.
- e. Reform of the city planning process and introduction of new forms of land-use regulation that give flexibility to private developers, but still protect the public interest.
- f. Improvement of building codes and standards to regulate private construction.

- g. Introduction of an ad valorem real property tax system (i.e., one based on market value assessments) and other revenue sources to help finance infrastructure and government services, overall municipal finance reform to support capital budgeting, and the introduction of debt-financing concepts for capital projects.
- h. Measures to shift subsidies for affordable housing to the demand side and away from the supply side (i.e., to consumers and away from producers), in order to encourage responsiveness to consumer preferences and permit accurate accounting of production costs.

3. The Creation of Housing and Infrastructure Finance Systems That Can Attract Private Savings Into Loans for Both Construction and the Long-Term Ownership of Housing on a Sound Business Basis

- a. Introduction of new and reconstituted primary lending institutions—both construction lenders and mortgage banks.
- b. Open access to construction financing for private firms on a fair and competitive basis.
- c. The introduction of savings and mortgage instruments that can work in an inflationary economy.
- d. The creation of secondary mortgage markets to provide liquidity for banks.
- e. The separation of housing subsidies from financial credit.
- f. Possible transitional role for government in providing loan guarantees until sufficient market experience to document actuarial risks.
- g. Laws to support lending secured by real property and regulations to protect borrowers.

It is hoped that over the life of a fully-funded program of technical assistance for housing sector reform, assistance could be delivered that would contribute to meaningful results in most, if not all, of the areas listed above. As a rule, basic policy development and legal/institutional reform topics would be addressed at the republic level with parallel "hands-on" demonstration programs implemented in capital cities. Attention would also be given to republic level strategies for replicating these demonstrations in other cities as appropriate.

B. RECOMMENDED INITIAL PRIORITIES FOR TECHNICAL ASSISTANCE

The technical assistance priorities identified below generally reflect the technical assistance strategy already in place in Kazakhstan, and, with minor caveats, should serve as a reasonable point of departure for initiating housing reform programs in the other Central Asian Republics.

The formulation of a detailed technical assistance strategy for housing sector reform should be governed by the recognition that:

- The most essential immediate task in housing sector reform (and perhaps the most difficult and problematic) is to move toward market pricing for housing services (maintenance, utilities, etc.). This requires some effective combination of raising rents and other fees for remaining tenants and, for privatized units, shifting the financial responsibilities of ownership onto the occupants, at least to the extent that they can afford it.

In all four republics (with the possible exception of Turkmenistan), progress in this area appears to be a paramount concern to both the republic and city officials, since the burden of maintaining virtually the nation's entire multifamily housing stock is perhaps the most insupportable burden of local government. More important for the reform agenda, achieving real market pricing is an essential precondition for attracting private investors into the management of existing rental properties and into the development of new homes, whether for sale or for lease.

- The overall dire condition of the economy as a whole will severely constrain the growth of new housing production through the operations of the private market. In particular, real incomes must rise significantly before there is sufficient effective demand for housing—sufficient to attract and support significant entrepreneurial activity and

in turn trigger a significant demand for market-rate construction and mortgage financing.

Discussions with officials in all four republics revealed a sincere interest in assistance in housing sector reform. In structuring any technical assistance in the sector, it is worth noting that:

- Officials in all four countries are eager for assistance in helping to put in place the overall legal framework for private housing real estate and financing markets and recognize that this is an area where progress can be made in anticipation of improved economic conditions.
- City officials in Bishkek and Tashkent appear to place first priority on receiving help in dealing with the fiscal burden of maintaining the multifamily housing—in terms of privatizing maintenance, raising rents, and shifting responsibilities to owner-occupants. Experience to date suggests that help in bidding out for private maintenance services is the most practical starting point in responding to this need.

Given these realities, near-term technical assistance should give first priority to reforms directed at the existing housing stock and bringing market forces into play in its allocation and maintenance. Here assistance would be timely in respect to both overall policy and law, and in respect to implementing operable programs and demonstrations at the local level.

In respect to assistance in the housing production and housing finance arenas, the immediate achievable tasks would center on creating the legal and institutional environment in which progress in terms of the actual delivery of new and affordable housing can be expected to materialize as overall economic conditions improve.

Based on these considerations, and discussions with republic and city officials, our preliminary recommendations for prioritizing technical assistance initially would suggest that expert help be provided in:

- Completing the initial housing privatization process, focusing on condominium formation and the privatization of housing maintenance
- Re-targeting housing subsidies in the form of consumer-oriented housing allowances to facilitate the transition to

market prices for housing services and general assistance in rationalizing housing subsidies

- Defining a comprehensive legal and institutional framework for private housing and land markets, and an agreed, prioritized agenda for the formulation of specific laws and policies (see below)
- Introducing market-oriented real property titling systems and valuation concepts, coupled with training in real property appraisal
- Introducing a transparent and competitive land allocation system to attract private investment in housing on a pilot basis
- Providing initial policy and legal guidance in housing finance reform, including establishing the legal basis for collateralized mortgage lending. (Consideration of intensive assistance in actually establishing housing finance institutions should be deferred unless it surfaces as an urgent government priority and then supported only after detailed confirmation that government intentions are consistent with the reform agenda.)

If the program expands on a regional basis, consideration should be given to recruiting regional advisers with complementary expertise (e.g., legal, housing economics in respect to national policy, property management, municipal finance, real estate appraisal, real estate development, and land-use planning for private investment on a local level to demonstrate practical approaches). Each adviser could then be encouraged to spend a certain percentage of time transferring the results of his/her work to neighboring republics and helping to support training on a regional basis.

C. A COMMON LEGAL AGENDA FOR HOUSING PRIVATIZATION AND REAL ESTATE DEVELOPMENT

The legal framework for ownership of privatized housing and for real estate development in each of the Central Asian Republics of the former Soviet Union needs further reform to promote a market orientation in the housing sector. Notwithstanding the adoption of the laws relating to privatization of state-owned housing and enterprises and their implementation, in varying degrees, since independence, the overall legal framework of the housing sector has not changed dramatically in Kazakhstan, Kyrgyzstan, Uzbekistan, and Turkmenistan. Laws guaranteeing private ownership of

personal property and income have been introduced. Yet the types of private legal interests in land, the role of government in land allocation, and government control of land use remain ostensibly unchanged.

The goal of a technical assistance program in legal reform of the housing sector is to help create the foundation for a real estate market. A strategy for technical assistance in this sector should target five areas: clarification and expansion of interests in land, governance of land and real property transactions, facilitation of entrepreneurial real estate development, reduction of government control of land allocation and land use, and support of private home and apartment ownership. Although expressed here as distinct topics, in reality, the five topics are interrelated and should be considered holistically.

1. Clarification of Land Interests

The purpose of technical assistance with respect to clarification and expansion of interests in land is to facilitate the introduction into the law of land tenures that are understandable, secure, lengthy, and alienable. The laws should be consistent and clear. They should articulate who may own land, the permissible forms of land ownership, the rights and obligations of landowners, and the conditions and circumstances under which the government may exercise eminent domain and condemnation. The laws should provide terms of the tenure that are long enough to support investment. The laws should state clearly the rights of the owners to alienate their land, by a lease, mortgage, or sale. The relationship between an enterprise and the land upon which it sits also needs to be defined in many cases.

2. Governance of Real Property Transactions

The purpose of technical assistance with respect to laws and regulations governing real property transactions is to establish efficient and smoothly functioning procedures for the transfer of legal interests in land and buildings in transactions between the public and the private sector, and between private parties. Legal reforms needed in this area include the institution of cadastre systems, the adoption of uniform standards for recordation and the public availability of information regarding title, and the adoption of laws regarding real estate contracts (including a statute of frauds) and other consumer protection matters.

3. Entrepreneurial Real Estate Development

The purpose of technical assistance with respect to laws regulating entrepreneurial real estate development is to create the basis for a private residential (multifamily) real estate development market. Legal reforms are necessary in a diverse group of laws to accomplish this goal. Increasingly, it is feasible for private parties to enter the real estate market as contractors who build under contract for the end user. But there are virtually no local entrepreneurs who build speculatively. A major reason for this is the absence of financing. In addition, the laws are not readily interpreted to allow for such activity; criminal laws may even prohibit speculation. Accordingly, the new enterprise laws must be reviewed, and perhaps revised, to ensure that entrepreneurial real estate development is permitted. The enterprises must have access to land for speculative development purposes. Real estate construction financing must be feasible—the banking and mortgage lending laws need revision to allow for secured financing. Finally, the laws should allow for real estate brokerage and other marketing mechanisms.

4. Government Regulation of Land Allocation and Land Use

The purpose of legal reform in the area of land allocation and land use is to minimize government control of the market. Short of a massive land privatization scheme, there are mechanisms that can be instituted to minimize the government's role in the market. Land allocation for single family homes or entrepreneurial activity can be done accordingly to published, objective standards. The procedures followed can be made transparent, i.e., visible and judicially reviewable. Public participation in land-use decisions can be encouraged. Auctions, requests for proposals, and competitive bidding opportunities can be offered to bring new developers into the market. All of these issues could be addressed in a legal reform package. Market-oriented land use regulations (e.g., zoning, subdivision law) could be addressed at a subsequent stage.

5. Home and Apartment Ownership

The purposes of technical assistance to support private home and apartment ownership are 1) to clarify the rights of apartment and homeowners with respect to alienation of their apartments or homes with lots, and 2) to extricate the government from privatized housing. These goals could be achieved by consolidating and revising the laws regarding home ownership and tenure, in the first instance, and by developing more fully the

individual and communal rights and obligations of owners of units in multifamily buildings, in the second instance. In the latter case, there is a need to amplify owners' rights and obligations with regard to maintenance and repair of common areas and building systems, to institute building management procedures, to adopt remedies for the building association against tenants and vice versa, and to introduce consumer protection tools in apartment sales.

Annex I. HOUSING PRIVATIZATION LAWS IN CENTRAL ASIAN REPUBLICS

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Milas Khasembaev
Director of Construction
AZAT

John Merouity
Consultant for foam-core plywood panel design
AZAT

TURKMENISTAN

Lidiya Dolzdenko
Chief of the Office of Privatization
Ministry of Economics and Finance

Tatyana Loskareva
Construction Specialist
Ministry of Economics and Finance

Berdymurat K. Nurmuhamedov
Chairman of the Supreme Economic Court
Ministry of Justice

Vladimir Hakimov
Chairman, Administrative Law
Ministry of Justice

Galina Chizhikova
Chairwoman
Parliamentary Committee on the Economy

Nazar Saparov
Deputy Mayor of Ashgabat

Khladurdy Dovodv
Administrative Officer
Office of the Mayor of Ashgabat

Annageldy Ecenov
Chief Architect
City of Ashgabat

Gene Christy
United States Embassy

Irina Bejgamova
United States Embassy

KAZAKHSTAN

Bair Dosmagambetov
First Deputy Minister
Ministry of Housing

Sharip Bekbatyrov
Chief of Almaty Housing Department

Tanat Tamenov
Director, Housing Privatization Office

Ismailov Bektur
Chief Engineer for Almaty Project Design Institute

Toktarhan Abugaliev
General Director of "AlmatyGenPlan"

Khalykov Gaziz
Chairman, Kazakhstan State Republican Concern
of Housing and Municipal Services

Victor Petrovich
Almaty Electric Power Station

Victor Salinkov
Director, VSSD Company (a small private trading enterprise)

Deputy Chief Architect?